Public Utilities
FORTNIGHTLY

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WHY THE COUZENS BILL WILL NOT

Undermine the Powers of the State Commissions

No sooner had the proposal been made to extend the Federal regulatory authority over public utilities (as provided in Senate Bill 3869), than the State Commissions attacked the measure as an intrusion upon their jurisdiction and an invasion of states' rights. That such is not the intent of the measure, and would not be the result of its adoption, is here stated in an interview furnished exclusively to Public Utilities Fortnightly by—

JAMES COUZENS
UNITED STATES SENATOR FROM MICHIGAN

On June 23, 1930, President Hoover signed Senate Bill 3619, "To reorganize the Federal Power Commission."

The reason for this legislation, I think, is generally understood, so I will not discuss it, except to say that the responsibility for the carrying out of the Federal Water Power Act of 1920 is taken from the three Cabinet officers, the Secretaries of War, Agriculture, and Interior, and placed in the hands of five full-time Commissioners, to be appointed by the President, with the advice and consent of the Senate.

This step paves the way for the administration of Senate Bill 3869, which I will here consider.

The duties of the Federal Power Commission, as prescribed under the Federal Water Power Act, are added to by giving this Commission jurisdiction to control all power generated by water or fuel transmitted in interstate commerce, this authority reaching out to control of power,

holding, management, and service companies having to do with the transmission of power in interstate commerce. This legislation is proposed because of the increase in the amount of current transported in interstate commerce.

WHILE the National Electric Light Association reported in a survey they made in 1929 that 11.8 per cent of the total current generated in the United States moved across state lines, yet that did not convey the complete picture. According to the statement of the same Association made in 1929, the percentage of power *exported* by some of the states to the total amount generated was as follows:

Vermont, 64.6 per cent; Wisconsin, 18.4 per cent; Iowa, 38.7 per cent; Maryland, 54.0 per cent; West Virginia, 54.0 per cent; South Carolina, 32.3 per cent; Alabama, 21.9 per per cent; Louisiana, 39.2 per cent; Idaho, 62.2 per cent.

The percentage of power *imported* by individual states to the total amount consumed was as follows:

Mississippi, 76.7 per cent; Utah, 53.1 per cent; Arkansas, 73.3 per cent; Missouri, 47.5 per cent; Nevada, 59.4 per cent; Maryland, 24.2 per cent; North Carolina, 27.3 per cent; Delaware, 66.2 per cent; Kentucky, 31.5 per cent; Minnesota, 25.9 per cent; Georgia, 27.2 per cent; Idaho, 40.3 per cent; Rhode Island, 25.9 per cent; West Virginia, 31.6 per cent.

In other states, the percentages of power imported are less than 20 per cent, but the figures above indicate how necessary Federal regulation has become.

THESE figures paint a somewhat different picture than if we only looked at the figures as averaged throughout the entire country. Furthermore, these percentages are based on the industry's own figures which give a general average of 11.8 per cent of all power generated in this country during the year of 1929, as moving in interstate commerce.

On June 12, 1930, the Federal Trade Commission, conducting an independent survey of the same subject, reported to the Senate that approximately 15 per cent of the total amount of energy generated in the United States during the year 1929 moved in interstate commerce. Doubtless, if the Federal Trade Commission's figures for the individual states were available, a corresponding increase in the percentages of the respective states presented above would be noted.

This may be properly construed as major legislation, and the Committee of which I have the honor to be Chairman will of course grant ample opportunity for all interested parties to be heard.

Some questions that will be raised, dwelling on the necessity of this legislation, will be:

Do interstate power utilities need Federal regulation?

Do holding and management agencies, controlling or affiliated with such interstate power utilities, need Federal regulation?

Is there any assurance that such Federal regulation will not interfere with a jurisdiction now exercised by State Commissions?

Let us consider the first query about the necessity of interstate power regulation.

Power Moving Across State Lines Is Growing

THE amount of power transferred in interstate commerce is unquestionably growing.

Differ as we may on regulatory policy, we cannot deny the fact that the fraction of unregulated power moving across state lines is becoming larger. A Harvard University survey for 1926 found that 9.06 per cent of all power generated in the United States moved in interstate commerce. The National Electric Light Association's survey for 1928 raised the yearly average to 10.9 per cent. A recent report of the Federal Trade Commission covering the year of 1929 increased the figure to approximately 15 per cent.

Senator Couzens of Michigan, Chairman of the Senate Interstate Commerce Committee, has proposed legislation of the first magnitude to regulate interstate power through a Federal agency—the Federal Power Commission, which is at present a mere licensing body. His bill (S. B. 3869), introduced last January to achieve this purpose, immediately commanded the attention of every State Commission in the United States.

Many of the members of these state bodies have openly expressed their fear that Federal regulation once launched would encroach upon, supersede, and eventually paralyze the jurisdiction presently exercised by the State Commissions over electric utilities, just as the activity of the Federal Interstate Commerce Commission has left little of the jurisdiction of the State Commissions over railroads.

To clear up these doubts, PUBLIC UTILITIES FORTNIGHTLY has gone directly to the source of the proposed legislation—Senator Couzens himself. In this exclusive article Senator Couzens tells us why he believes the law he proposed will help rather than hinder state regulation. He tells us in plain words what he is trying to do and why Federal power regulation will not have the same destructive effect on the jurisdiction of the State Commissions as has the Federal railroad regulation.

—THE EDITORS

THE principle of government regulation of public utilities has been generally adopted in this country both by Federal and state governments; the enactment of legislation of the character here proposed will be merely the extension of this principle to a branch of utility service which has become in recent years more bound up with public interest and modern progress than any other form of such service. I need not dwell on the necessity for the maintenance of adequate electric service, and it would seem to follow immediately that I need not dwell upon the necessity for its regulation.

For a number of years nearly all of the states have regulated the intrastate operators of electric utilities and until the last few years this state regulation has been all that was re-

quired. The generation and distribution of electric current was usually strictly local. Twenty-five years ago the interstate operation of electric companies was practically unknown. The average plant serving a city had trouble enough passing current out to the suburbs of its own community. Transmission of current in excess of 25 miles was usually regarded as economically impractical. With the improvement of the electrical art, however, long-distance transmission has gone ahead in leaps and bounds. Vast networks of transmission lines have been built up linking cities together into interconnected systems, stabilizing and standardizing both the supply and its operating costs. In the Boulder Dam region, for instance, plans are laid for transmission of current 250 miles to Los Angeles.

Surely such a substantial fraction of the total electric business needs regulation. I am convinced that the absence of such regulation has hindered the complete and efficient regulation of intrastate electric utilities—that it is a potential loop-hole if, indeed, it has not already been a means of evading and defeating state regulation.

I BELIEVE in home rule. I believe that government should be kept as close to the people as possible. Nothing is further from my mind than the invasion or duplication by the Federal Government of the work which the states can do.

How can the Federal regulation I have proposed supplement state regulation without duplicating it?

This brings us to the second proposition—the regulation of holding and management companies.

THE holding company has rapidly developed as an integral part of modern utility operation. This development has gone hand-in-hand with the development of long-distance transmission. The linking up of great interconnected power systems has resulted in numerous consolidations, mergers, and intercorporate relations. The reason given for these combines is that they achieve operating economies through such methods as joint purchasing, joint construction, and joint supervision and management.

Under present regulatory conditions, these holding companies constitute a dangerous gap in the field of public control. The vast majority of the states do not attempt to control these companies. A few which have attempted it are being confronted with constitutional objection. In Michigan, for instance, an attempt to disregard the corporate entity of a nation-wide telephone holding company in fixing the rates of the local operating subsidiary is at this time being questioned in the Federal courts. In any event, whatever jurisdiction the state could exercise would be limited to the control of such companies with strict regard to local operating companies, it was declared in a recent opinion of the Honorable W. Cable Bruce, former United States Senator from Maryland, and now general counsel for the Maryland Public Service Commission.

Add to this the fact that the vast majority of utility holding and management companies are interstate in their scope and we see that the most that a State Commission can do is rather limited with relation to the

whole question. This is the problem with which the New York state legislature is now grappling.

NUMEROUS examples of how interstate holding and management companies constitute loop-holes in the regulation by State Commissions could be given, but every State Commission knows them—they are well aware how operating utilities by the mere process of padding operating expenses through supply contracts with "affiliated" companies are able to charge rates with which, on paper, they may be losing money, but which in fact reflect a net profit in the corporate pocket of the parent concern. State Commissions have at present no way to secure evidence to prove or disprove the reasonableness of these supply and administration contracts.

My bill (Senate Bill 3869) will permit the inspection of the records of such interstate companies. To this extent, I regard these measures as a real aid to State Commission regulation since the disclosure of records of large interstate holding companies will frequently reflect the nature and extent of their activities relating to intrastate operating utilities.

THE measure is wide in its scope. The act is made applicable not only to "parents" of operating power utilities whether engaged in production, transmission, or distribution but also to persons engaged for compensation in furnishing to interstate commerce, information or advice as to interstate power operations.

Here is the definition of "parent" given in the act.

> "'Parent' means any person or group of persons controlling one or more corporations and/or the operations or management thereof, whether by ownership or control of stock, or by interlocking directorates, or otherwise. The ownership or control by any such person or group of persons of 15 per centum or more of the stock of any corporation shall be prima facie evidence of the control of such corporation and of its operations or management by such person or group of persons. A corporation to which such person or group of persons sustains the relationship of parent is herein termed a 'subsidiary' of such person or group of persons."

Over and above this the measure seeks to control affiliated persons. Here is the definition given for affiliated persons:

> "Two or more persons shall be deemed to be affiliated if they are members of a group, composed of a parent and its subsidiaries and of other corporations, of which each member except the said parent is a subsidiary of some other member of the group."

I HAVE been asked if the provisions as to the sending of advice or information on interstate power operation would affect the activities of various magazines which might carry reviews or technical articles on interstate power operations as incidental contributions. Such was not my intention, and I feel certain that the courts would construe the provision to apply only to organizations professionally engaged, as a primary purpose of their existence, in the ren-

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dition of service to interstate power companies.

THIS brings me to the final proposition: Will the bill interfere with State Commission regulation?

My answer is emphatically, "No!"

I cannot stress too much my purpose to supplement and not to duplicate the work of the state bodies.

THE fact that the bill is written carefully to insure the protection of the jurisdiction of the State Commission is borne out by the provisions with relation to the joint boards. Everyone knows that the jurisdiction of the Federal Government over interstate commerce is exclusive. Moreover, this is a duty which the Federal Government cannot constitutionally delegate to the state or to anyone else. It can, however, appoint a joint board made up of state representatives and constitute such a board an agency of the Federal Power Commission, and make it an arm of the United States Government.

That is what the bill has tried to do. Here is a passage from the bill:

> "The Commission shall refer any such petition with respect to rates, charges, services, or abandonment of service to an agency of the United States, to be known as a joint board, composed of one representative from each state in which the power involved is produced or consumed, as determined by the Commission. In the case of a state having no State Commission, the petition may be filed by the governor. The representative of each state upon any joint board shall be selected in such manner as the state may by law provide; except that if the state has no provision of law for such selection, the representative of the state shall be appointed by the State Commission for that state, or if there is no State Commission, then by the governor of the state."

It will be observed that care is taken not to dictate in any way, even the manner in which the state representative shall be selected. Everything that could possibly be left to the discretion of the state, has been left that way.

THE objections originally raised by the State Commissions to the bill may be classed roughly into two groups.

First, there was some question as to the definition of jurisdiction to be given the Federal Commission over interstate power.

Secondly, there was the objection raised to the jurisdiction to be given to the Federal Commission over an electric utility distributing within one state but obtaining its supply in another, where such jurisdiction is being exercised by the State Commission.

REGARDING the first of these propositions, let us consider a provision of the bill:

> "The provisions of this act shall also apply to the generation of power for ultimate public consumption for transmission in interstate commerce, to the transmission of such power in interstate commerce, and to the sale, distribution, and/or delivery of such power as a part of interstate commerce."

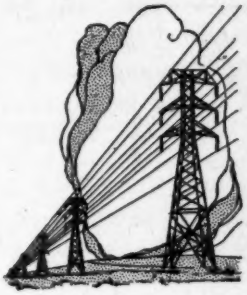
Let us, for example, take a situation where a utility company operating and distributing in North Carolina buys current at the state line from another utility company generating that power in South Carolina.

THERE are two separate situations to be dealt with here: the sale and transmission from the *generator* or wholesaler in South Carolina to the operating utility or *distributor* in North Carolina, which is an interstate transaction, and the sale and distribution by the distributor in North Carolina to consumers in that state, which is an intrastate transaction.

The Limited Power of the State Commissions for Controlling the Holding Company

"THE vast majority of the states do not attempt to control these (holding) companies. A few which have attempted it are being confronted with constitutional objection. . . .

Add to this fact that the vast majority of utility holding and management companies are interstate in their scope and we see that the most that a State Commission can do is rather limited with relation to the whole question."



In the present state of the law, the North Carolina Commission has full and exclusive jurisdiction to regulate the rates and practices of the distributor whose operations take place entirely within North Carolina. However, because we have no legislation providing for the regulation of interstate transmission of power, no one has any authority to regulate the rates and practices of the generator in South Carolina which is transmitting its output across the state line.

Furthermore, under the present practice, while the North Carolina Commission has full authority to regulate the rates of the distributor to the consumer, it must allow such rates as will permit a reasonable return. Because there is no means of regulating the charges of the generator, the latter may charge the distributor whatever price it sees fit. Then the distributor will be entitled to figure that price as its cost of power and the North Carolina Commission, in the absence of a showing of fraud, must accept that price in its consideration of the distributor's rates. We see, therefore, that the consumer is vitally interested in the wholesale price paid by the distributor, and if the rights of the consumer are to be fully protected there must be control over this wholesale price. This control can only be exercised by a Federal body and it is the main purpose of the proposed legislation to provide for that control.

If this bill is passed there will be control over both situations. The transactions between the wholesaler and the distributor, now uncontrolled, will be regulated by the Federal body. On the other hand, transactions between the distributor and consumer will be controlled by the North Carolina Commission just as they now are.

Now there is another legal question about this phase of bill asked by those who are deeply interested in preserving state regulation so far as possible:

Might a court say that because the current sold to consumers by the dis-

tributor has been transmitted in interstate commerce the Federal body might regulate the transactions between the distributor and consumers also and supersede the North Carolina Commission?

A CAREFUL reading of the section just quoted will disclose that it does not say that the provisions of the act shall apply to a sale of power which *has been transmitted in interstate commerce,* but only to a sale *which is a part of interstate commerce.*

There is no question that the sale by the wholesaler in South Carolina to the distributor in North Carolina is a part of interstate commerce and that such sale will be subject to regulation by the Federal body, as it should be. However, I am advised and feel very confident, in view of the many decisions which have been made with reference to shipments of commodities, as for instance in the adjudicated cases dealing with the "breaking of bulk" of package commodities shipped in interstate commerce, that the courts would hold that the purchase by the distributor at the state line would terminate the interstate character of the transaction, and that a sale by the distributor to a consumer within the state would not be a part of interstate commerce, but a purely intrastate transaction over which the Federal Commission could exercise no authority. Of course, it naturally follows, if the sale to the consumer was not a part of interstate commerce, the section quoted would have no application to it.

WHILE this construction seems clear, I have gone further, and in Section 31 (d) made this specific provision:

> "Nothing in this act shall be construed to authorize the Commission or any joint board to regulate rates, charges, or services for or in connection with the generation, transmission, sale, distribution, and/or delivery of power which does not enter into or become a part of interstate commerce whether for the purpose of removing discrimination against interstate commerce, or for any other purpose."

In order to further safeguard the situation, I propose to add to this the following:

> "or to regulate rates, charges, or services for or in connection with the transmission, sale, distribution and/or delivery of power taking place wholly within any state, notwithstanding that said power may have been transmitted in interstate commerce to the person so transmitting, selling, distributing, or delivering the same within said state."

With this language included, there can be no possibility of interference by the Federal Commission with sales within a state by an operating utility which has purchased the power from without the state.

THE second question arises in connection with the following passage:

> "Notwithstanding the foregoing provisions of this section, nothing therein shall be construed to abridge the jurisdiction or authority of any state to regulate, to the same extent as if this act had not been passed, the rates and charges for the sale to consumers within the state of any power transmitted in interstate commerce, service to consumers with respect to such power, or the abandonment of any power service to consumers, unless a substantial number of the consumers of such power (to be determined by the Commission in accordance with such regulations as it shall prescribe) file with the Commission a petition requesting Federal regulation of such rates, charges, and service under this section."

TO put this situation into a concrete example, let us suppose that our North Carolina distributing util-

ity, instead of buying at the state line, actually went over into South Carolina and generated its own supply to be imported for its own consumers. This sort of business has been held to be a class of interstate commerce over which the North Carolina State Commission may regulate in the absence of Federal regulation. Such was the holding of the Supreme Court of the United States in the Pennsylvania Gas Company Case. I have no desire to disturb this state regulation where it is actually working.

Now, I have been asked why I did not make the "substantial number" specific. I have been told that the extension of the right of petition for Federal jurisdiction to the consumers and not to the utilities raises an ethical if not a constitutional question. It has been contended that to permit an indefinite group of dissatisfied consumers in such a situation to kick over the traces of state regulation at any time during a proceeding of the latter would seriously hamper and embarrass the effectiveness of honest state regulation.

WITH all due regard to the excellence of state regulation, it is a fact that some states have Commissions of very limited jurisdiction. One state—Delaware—has no Commission at all. A few State Commissions have no jurisdiction over the rates of electric companies. A few other Commissions seem to be inactive over such matters due to inadequate appropriations or for other good and legitimate reasons no doubt.

Some regulation is necessary for those electric companies which import power for distribution in those states whose Commissions cannot or will not regulate them. The passage from the bill quoted above is at present the best solution I could find for the problem.

There was one suggestion made to fix a definite fraction of the number of consumers who might petition for Federal jurisdiction. I hesitate to do this because of the obvious difficulty of imposing any inflexible percentage as a condition precedent to such jurisdiction. Unquestionably circumstance will have a great deal to do with each case.

I think that everyone who has read the bill will agree that I have tried to be fair. I feel that many of the State Commissions who have criticized the measure have done so without a full knowledge of what I am attempting to achieve.

IN conclusion, I might point out, among others, the portions of the

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bill by which utilities are also forbidden to capitalize the value of gifts, franchises, or donations. The Federal Commission is directed to value all operating properties subject to its jurisdiction and is given plenary powers to investigate the records of the parties involved to that end. The other provisions give the usual powers over rates, service, and securities issues contained in regulatory legislation.

In short, I have attempted to reach the two great dangers of unregulated interstate power transmission—the interstate operating utilities and the interstate holding or "affiliated" company. I have attempted to do it in a way that will avoid the usual objection to the centralization of power in the Federal Government.

I feel that the bill, with due regard to the intentions which I have outlined here, deserves support. Federal regulation over the interstate power field is inevitable.

Other Attempts at Joint Regulation

SENATOR Couzens' plan for the handling of interstate regulation through the medium of joint boards is probably the ultimate and legal solution of a problem with which the Commissions have conjured for sometime.

It was over four years ago that the Hon. William A. Prendergast, then Chairman of the New York Public Service Commission, suggested "regional" regulation—a plan by which the respective Commissions from a group of neighboring states could administer, entirely by way of voluntary agreement and comity, a co-ordinated plan for regulating interstate carriers in that area.

More recently, members of the District of Columbia Public Utilities Commission were considering a similar plan for the joint regulation of such carriers by the combined Commissions of the District of Columbia, Maryland, and Virginia.

These plans fell by the wayside, obviously because of the constitutional obstacle—to wit, the fact that interstate commerce is entirely within the jurisdiction of the Federal Government. Just last month (July 15th), however, the Hon. Albert J. Woodruff, Vice Chairman of the Georgia Commission, announced that five southern states have entered into an agreement under which their respective Commissions will recognize certificates of convenience and necessity issued by each Commission to motor carriers.

Commissions from Florida, Tennessee, North Carolina, South Carolina, and Georgia are members of the new conference. These Commissions will hereafter suspend action upon an application for a bus line through more than one state until the Commission in the state of the applicant's residence shall have passed upon the matter.

An Ambassador Makes a Speech

AMBASSADOR Frederick M. Sackett made a speech at the World Power Conference in Berlin in which he outlined a new basis for determining the efficiency of an industry or the reasonableness of its rates. In the course of his address, referring to the electric utilities, he said:

> "I know of no other manufacturing industry where the sale price of the product to the great mass of consumers is fifteen times the production of the article sold."

Leaders in the electric field deny that any such spread between sale and production price exists, but we shall not attempt to discuss the merits of that question.

From the Ambassador's statement two inferences might be drawn, one that the sale price is too high because of inefficiency in distribution, the other that it is too high because profits are more than they should be.

This is an indictment of both the electric industry and of the State Commissions which regulate it.

But the Ambassador has been guilty of a *non sequitur*. Neither of these conclusions could be supported by a fact, if it were true, that the sale price were fifteen times the cost of production. Such a statement does not even raise a presumption which ought to require an answer. Yet it is an argument that a politician would be delighted to use; and perhaps it is an argument that will be used if a political issue is forced upon the industry.

It reminds us of a statement made on the floor of the United States Senate not long ago.

> "If," remarked a certain Senator, "you will notice the prices we pay for commodities on bills of fare, and what the farmers get for them, you will see proportionately what we pay for freight rates."

The Senator evidently assumed that all that lies between the farm and the man seated at a table in a restaurant is the railroad. It is a favorite form of political fallacy. The Ambassador's reasoning is of the same type.

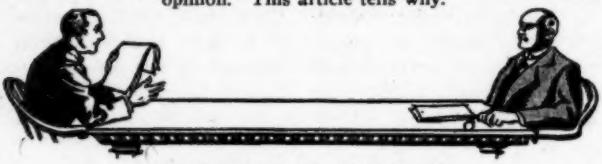
The spread between the manufacturer's cost and the retail price might, in one case, be represented by a multiple of 5, in another 15, and in another 1,000, but that alone would not prove that the sale price in either case was reasonable or unreasonable. The spread might or might not be justified.

The conditions surrounding distribution are usually not the same, and unless they were precisely the same, comparison of the spread between manufacturer's cost and retail prices is absolutely valueless.

Henry C. Spurr

Presenting the Case of the Utility to the Public

Much of the misunderstanding that arises between the corporations and the Man-on-the-Street, states the author, is due to the fact that the press relations are usually dictated by the lawyer, the financier, and the engineer instead of by the journalist who is trained to understand public opinion. This article tells why.



By JAMES H. COLLINS

I LIVE in Los Angeles. It is quite a town—four hundred and fifty square miles of it to be got over, and practically untouched as to modern city transportation.

You see, first the railroads came to the northeastern edge of the original town, and stopped; children may grow up in Hollywood and never see a railroad train. The other day, happening to go over to the East Side, I saw a railroad train for the first time in several months, and said to myself, "Are they using those things yet?"

In Hollywood, where I live, we see chiefly aircraft.

As the original town began to spread, the trolley was developed, with the outcome that Los Angeles has a magnificent system of trolley lines, operated on the local car system. Hardly anything resembling express service. To get from the East Side out to Hollywood, a distance of about twelve miles, as the crow flies, will take all of an hour and a half.

Nobody does it, except poor people, colored women with day work in Hollywood, and Mexican laborers who do not own some kind of a car. When the trolley systems failed to consolidate into real interurban systems, the people began to get around this town in various other ways, acquiring cars of every description. Even the horses and mules ride in some kind of automobile.

I DRIVE an automobile when I have to. But being an old hand at that game, I long ago became sold on trolley cars, subways, elevated trains.

In Los Angeles, downtown people have short tempers. This is due, as much as anything, to the daily motor drive to and from the office. The drivers who cut in ahead, the traffic cops and lights, the parking place to be paid for, and the strain of driving, all help to "take it out" of business people, and they know that—but there seems to be nothing else they can do.

However, I travel very little, and always use trolley cars where it is possible, and I have a choice. In Los Angeles, we have yellow and red cars, and in Hollywood red cars alone.

I often use the yellow cars downtown for short rides. They correspond to the subway in New York. There is little use to take a taxi, because this is not a taxi town; the rates are high, and the drivers have no "savey" in getting around a city with a bunch of traffic in a comparatively small center—they take you in, as a fare, and instead of cutting down some little-used street, proceed to get themselves tied up in the traffic.

On the yellow cars I often ride seven blocks for 7 cents. Each car, narrow gauge and of ancient architecture, has a little box of folders. "Take One!" is the invitation, and if you do, you read publicity explaining the difficulties under which the company labors.

As a passenger, this publicity leaves me cold. Seven blocks for 7 cents, and generally it takes seven minutes. I should worry! As a passenger, I am indifferent—which is one of the great basic traits of the public.

On the red cars, to and from Hollywood, I ride 8 miles for a dime—not so bad. But it takes forty minutes, and the cars are fifteen minutes apart in the busiest hours of the day. The red car people do not explain things in leaflets, but from time to time I see articles in the newspapers explaining why the company needs higher fares.

I would be glad to pay a nickel more for a faster ride, and a car every five minutes, but the newspaper publicity never says anything about that. The schedules have been exactly the same for four years, to my knowledge.

Self-interest! Another great basic trait of people—and of utility management.

I am concerned only with *my* troubles, and the utility folks want to talk about *their* troubles. East is East, and West is West, and never the twain shall meet.

HOWEVER, I happen to be something more than a customer of utilities, because, as a writer, during the past twenty-odd years, I have known many utility executives, and written much about utility management.

As a writer, I know that utilities are managed chiefly by engineers and financiers, who are more at home with technical problems than with people.

The engineer is, psychologically, an "introvert," meaning that his thoughts turn inward to peak hours, costs per unit, and so forth. Otherwise, he would not be an engineer.

Once, years ago, a telephone company planned putting the cables underground in a fine residence neighborhood. It was necessary to get the consent of property owners to run short poles along the rear of handsome lots laid out in beautiful lawns —otherwise the wire-laden poles in the street could not come down.

The company asked for such permission. True introverts, the engineers in management thought about what they wanted to do. The public became suspicious, and reasoned that wires were entirely underground downtown; why were they not underground in the residence district?

The more the engineers explained, the more suspicious people grew.

Finally, it occurred to somebody in management to have me write a pamphlet for the information of the property owners. Being a journalist and, therefore, accustomed to think of the public's viewpoint first, I got the facts, and put them in magazine form, with pictures. The short poles became "posts," if you please! The reasons why telephone cable had to be kept dry, and a certain number of "pairs" brought out in each block to serve subscribers, were explained. Pictures of downtown New York before the development of underground cable were printed to make the principle clearer, and the whole Big Idea was put in terms of improved service to the public. If property owners would consent to certain necessary conditions, they could have a more sightly telephone arrangement. If they would go a little further, the service could be still better—but there were technical limits to the possibilities, as in all engineering questions.

THIS pamphlet was distributed; it contained an impartial description, not propaganda, and the result was that the property owner found himself in exactly the engineer's place, confronted with the engineer's problem and with several possibilities for solutions from which to choose the one with the most advantages, and the fewest disadvantages.

This description was read, at leisure. It was an honest presentation of facts. People made a very good engineering decision, amounting to what the company wanted them to decide. And there was no further trouble.

UTILITY men are engineers, restrained by financiers, and guided by attorneys—all inward-turning men.

They explain in reports, balance sheets, and legal decisions.

If the public is to be taken into their confidence, the utility men usually have some "publicity" prepared and printed for distribution.

This publicity, nine times in ten, takes the form of an argument for the engineering, financial, or legal side of their case. The stronger the presentation, the more they feel that the public must see the facts.

Now, the journalist works in a different fashion.

First of all, the journalist is concerned, not with proving a given case, but in getting and presenting the facts that will interest the public—and even entertain it. He knows how great is the competition for attention; he knows how indifference and self-interest rule even the technical fellows when they drop their own problems.

The journalist wants all the facts, because as a reporter, he has learned that somebody has an interest in concealing some side of every news event, and to get that hidden aspect is the very essence of reporting—even though it is not always for publication. The average utility argument looks, to him, as full of holes as a Swiss cheese, and he knows that it looks the same way to thousands of people who make up the public, and who will discount it on appearance, especially if there is evidence in the first paragraph of special pleading.

THE journalist knows that people are constantly taking sides in all new events, and that first impressions are valuable. You yourself, for ex-

What the Utility Wants to Tell May Not Be What the Public Wants to Know

"UTILITY men are engineers, restrained by financiers, and guided by attorneys—all inward-turning men. They explain in reports, balance sheets, and legal decisions. . . . Their publicity, nine times in ten, takes the form of an argument for the engineering, financial, or legal side of their case. The stronger the presentation, the more they feel that the public must see the facts.

"Now, the journalist works in a different fashion. First of all, the journalist is concerned, not with proving a given case, but in getting and presenting the facts that will INTEREST THE PUBLIC—*and even entertain it."*

ample, are constantly taking sides.

For example:

In this morning's paper you read that the Rabob of Utskut has fled from his obscure kingdom, with his young wife, and that Burzwa, leader of the Tolerant Party, has become president *pro tem.*

Just step aside for a moment and watch your mind try to decide whether the people of Utskut are right, or if its king is a fellow who thinks much as you do. The human mind does not rest until it finds the side it believes it had best be on, even in matters half round the world! We call that "forming an opinion," and we will often fight to sustain our own side.

The journalist knows that first impressions are vital in presenting any case to the public.

The journalist knows, too, that utility questions are generally abstract. This means that they lack human interest for readers.

A good murder is entirely concrete. There is the corpse, the gun, the scene of the crime, the beautiful suspect. Why do people crowd to the house where the body was found and to the court building when the beautiful suspect is expected? Because here is something concrete—something, somebody to see.

A UTILITY problem is a matter of rules, regulations, decisions, money in small amounts that the public must pay, to make up huge sums that some abstract corporation is presumably to get. Even if people read these solemn statements and rulings, they find nothing human or personal in them.

"How is this going to affect me?" is the thought of the average man. And if he does not see, then, he is likely to conclude "Aw, well—that is a rich corporation, and they should soak it to them!"

On the day a decision is handed down, the reporters interview the president of the company. They are child-like in asking, "What do everyday people get out of this decision? Does it reduce living costs?"

But let us turn a utility problem into a murder case, and see if we can get the public to come and stare at the beautiful suspect!

We will take for illustration, the yellow cars, in Los Angeles; the one fact about them which I am absolutely prepared to go into court and testify to is, that I pay a cent a block to ride.

How many more blocks the company would carry me, I do not know.

For several years, I believe, this company had some sort of law suit in progress for higher fares. I know only two things about that:

First, that I see occasional headlines in the papers about some new decision in the suit, and details that I have no reason to read.

Second, that for a time the company gave rebate slips on four-for-a-quarter fares, to be redeemed if the fare decision went against it.

One morning, a year or so ago, the final decision was handed down by the courts. It made the higher fare permanent. Immediately all the rebate slips that people had saved became worthless. The newspapers seized upon that idea, with a cartoon entitled "Another big fortune wiped out!" showing Father's bundle of rebate slips, now nothing more than waste paper.

At the time, the president of the company, or the attorney, or the publicity man, announced that this decision meant better wages for employees, new cars for the public to ride in, and—Oh, lots of nice things! He talked just like Santa Claus.

But the same old cars are still running, the same conductors and motormen look as though they were getting the same pay, and as a customer, I get the impression that I have been mulcted for a forty per cent increase in fares without a penny's worth of added value.

Naturally, we have newspapers here in Los Angeles that put that impression into words for me, and make it strong—and these papers are read by the not-so-well-off folks who ride on the yellow cars.

Now, a utility decision of that kind is a news event for one or two days, and it then drops out of the papers.

A murder is, legally, nothing more. The crime is committed, the coroner's jury brings in a verdict, a suspect is arrested, and the actual events then stop until the trial occurs.

Everything between the murder and the trial, by which the court scenes become so dramatic to the public is—created by journalists. It is they who egg on the man in the street to speculate as to whether Katy did or Katy didn't.

Could a utility decision, or even a suit for higher fares, be dramatized in the same way?

Yes, this is a possibility for the skilful journalist.

The murder is richer in dramatic materials, affecting people where the utility case deals only with nickels, cars, and service.

But the public interest is the same—newspaper readers want to know which side they shall take, whether for the beautiful defendant or the incorruptible district attorney, whether for the millions that will go to the rich corporation if it wins, or the new yel-

low cars it is going to get, with a more comfortable ride for another two cents.

Bitter battles are fought over those two pennies. Utility executives, attorneys, and newspaper editors assume that the public is interested in the money involved, and nothing more. So much stress is put upon money that newspaper readers themselves get the idea that this is the most important phase of the question.

But if the utility executive would follow the market counsellor in his surveys of people, to determine policies in selling things like automobile tires, he would discover that price is not an obsession with the public.

In fact, one survey in the tire field disclosed that less than twenty per cent of the public hunts bargains in tires, that about thirty per cent select the highest quality tire as the most economical in mileage cost, and another fifty per cent purchase the best standard tire that it can afford, for the same far-sighted reason.

Value interests the public much more than price, and this willingness to pay for value dominates a great deal of the merchandising of commodities.

In dramatizing the rate case of a utility corporation, the seasoned journalist might bring out the better value in a 7-cent ride, against a nickel ride.

Here is where the yellow car folks have followed the usual policy of silence.

Apart from a statement published at the time of the decision, I have read nothing about better service.

What are the new cars going to look like?

There is no reason why I should not know details of design from month to month, just as I know the color of the beautiful murder suspect's eyes, the shape of her nose, and the kind of hat she wears every day.

To me, it is just as interesting, and much more personal, to know how many steps up into the new cars, whether they will be operated by a conductor at the rear or the center, if the smoking compartment is to be kept, what upholstery, what system of marking the cars to show where they go—at present they are marked with letters, and you have to ask a cop!

The fact is I am hospitable toward the merchandising effort on behalf of better cars and service, and if the

How Arrays of Mere Facts Affect the Ratepayer

¶ *"A utility problem is a matter of rules, regulation, decisions, money in small amounts that the public must pay, to make up huge sums that some abstract corporation is presumably to get. Even if people read these solemn statements and rulings, they find nothing human or personal in them. "How is this going to affect* ME*?" is the thought of the average man.*

company can show me where I get more comfort and convenience for the 2 cents, I will forget the higher price, like a good American, who is constantly being taught to pay more for automobiles, radio sets, straw hats, and sirloin steak.

For at least ten years I have been waiting for some utility company to propose a 25-cent car or bus ride. It is a marvel to me that, with a public steadily increasing its expenditures for better clothes, more comfortable homes, a broader life in entertainment and recreation, no corporation ever comes to me with a proposition to economize some of the most precious stuff I have, my energy, and sell me a ride in a club car for a quarter, or a motor bus in which the rule about seats for every passenger will not become a scrap of paper.

In every other field of merchandising, trading up is a profitable process; why not utility service?

Engineers and financiers work hard to produce service, but for lack of merchandising and advertising ability, allow their customers to think about price alone.

In urban transportation, the public has been led to think of price to such a degree that it knows nothing about other possibilities in trolley rides. The company is always pleading, litigating, and lobbying for higher fares, in the opinion of the man in the street; he sees the fares go up, and the traffic go down. The service is no better, and this man in the street has come to the conclusion that he is against the company. To be independent, he acquires some kind of automobile. The cost per mile is at least 5 cents in money—and how much in energy?

I fully believe that merchandising methods will come in this field, as in every other, and that millions of fellows like myself are ready to hear what street transportation corporations have to offer in the way of quality service.

Another service that the journalist might do for the utility organization is—to make it live in personalities.

Our great utility executives are mostly unknown. If the public knew them as well as it does the beautiful husband-killers, it would probably be equally sympathetic toward their problems!

Is the time coming when corporations will again be known by personalities?

During the last fifteen or twenty years the Hills, Harrimans, Yerkes, and like figures, have disappeared—if they have not been studiously suppressed. To us customers today, a utility corporation is not a personality, but a banking influence—and we know where we get off in expecting anything from Money, in its impersonality.

I fully believe that when the public is taken into "publicity," and when it sees the wheels go round to produce better service for its money, and feels that a personality is working for its good as well as that of the corporation, then it will be possible to do things in this field of business on a scale so big, and with such promptness, that the public utilities will become as popular as Henry Ford's enterprises.

Remarkable Remarks

H. I. Phillips
Newspaper columnist.

"The upper berth was, is, and always shall be the answer to a rubber man's prayer."

Martin J. Insull
President, Middle West Utilities Company.

"Our costs are established by the customer's acts; by the amount of electricity he elects to use, by the time and place at which he chooses to use it, and by the duration of his use."

William C. Hammer
Congressman from North Carolina.

"The moment private funds are used for the conduct of government business, we must admit that private organizations have the say as to the conduct of government business."

Henry T. Bellew.

"While the good citizens of New Jersey (those that voted for Morrow) are standing with eyes transfixed and arms extended for the countless glasses of imaginary lager promised them, the monopolies, particularly the power trust, will be licking the platter clean."

Louis Munro
Advertising Agent of Boston.

"The public utility, like all large corporations, furnishes a relatively easy target for the professional politician and in turn, for at least a portion of the press, who regard certain utility news as circulation building material of great value."

William J. Hagenah
Vice President, Byllesby Engineering & Management Corp.

"The best results cannot be expected from State Commissions under situations that impose on the members duties and responsibilities comparable with those of the highest judicial officers of the state, but providing compensation that in some states is no more than the earnings of building tradesmen and factory artisans."

Harper Leech
Economist and editor.

"What is called in political language the 'pork barrel' and 'log rolling' are really nothing more than economic equivalents for business vices, which are called 'overcapitalization' and 'watered stock' where get-rich-quick promoters have been at work. There is one important difference between the two varieties of overcapitalization—when water is pumped in by political log rollers, it stays in—or at any rate it stays in as long as the government can collect taxes enough to pay the charges on it. In private business the water is squeezed out."

EDWARD N. HURLEY
War-time Chairman, U. S. Shipping Board

"The failure or inefficiency of many of our government enterprises such as canals, waterway improvements and flood control, is to be attributed to the fact that "log-rolling" rather than engineering science determined the execution of the projects."

COLONEL M. C. RORTY
Vice President, International Telephone & Telegraph Corporation.

"The international telegraph service, whether by cable or radio, will perhaps always continue to play the more important rôle, but it is difficult to overestimate the value of the international telephone from the standpoint of friendly understanding between nations."

MATTHEW S. SLOAN
President, The New York Edison Company.

"The laws and the machinery of public utility regulation are being recast to conform them to rapidly changing conditions in the utility field. . . . Unfortunately they are being recast amid a clamor of extremist theories, demagogic attacks and political maneuverings."

ALBERT J. WOODRUFF
Vice Chairman, Georgia Public Service Commission.

"Comity has been established between states as to motor vehicle tags. Likewise, the reciprocal agreement reached in the matter of motor carrier certificates of public convenience will go far toward eliminating many difficulties that have been a cause of friction between the state agencies."

O. C. MERRILL
Chairman of the American Committee, World Power Congress.

"The conference has revealed more clearly than ever before the fact that world interest in the use of power is progressively becoming a positive influence in binding nations together. Political frontiers and language barriers are no obstacles in the eyes of engineers and scientists."

JOHN H. MILLER
Nebraska Commissioner, (in a recent dissenting opinion.)

"It is my understanding that the street car officials and employees use their own automobiles to come and go to and from their work. Instead of using their own cars I think they should ride the street cars, on a reduced fare. This of itself would bring in some additional revenue."

MERLE THORPE
Editor, "Nation's Business."

"We are told by the Senior Senator from Nebraska that if we had the Canadian system of government operation we could save the domestic users of electricity six hundred millions dollars each year. That statement needs light in view of the fact that the total domestic bill for electricity in the year referred to was only four hundred and thirty-three million dollars."

The Real User of a Charter of a Utility

Is Its Granting a Business Transaction— or an "Act of Grace?"

"THE great question for me and for you to ask is whether we are going to return to the 300-year old distinction between a company engaged in a wholly private business and a company engaged in a monopoly of a service which must be used by all our citizens, rich and poor alike—a monopoly which exists by grace of you and me, through the charters which we have granted."

Franklin D. Roosevelt

GOVERNOR OF NEW YORK

By HENRY C. SPURR

THIS is a fair statement of the attitude of a large part of the public not only toward its utilities and their regulation, but also toward all other kinds of business conducted by corporations.

The impression we wish to convey by that attitude is:

If it were not for us where would you be? It sounds a good deal like parents reminding a wayward child of how much they have done for him.

Before considering the question of the graciousness of the public in granting charters to utility companies and other kinds of corporations, a few preliminary observations will be in order.

We all know that Amos and Andy of the famous Fresh Air Taxicab Company of America, Incorpulated, are buddies and partners; but that Andy has acquired a somewhat exaggerated notion of his own importance. He is president of the company. Amos is only the driver of the taxi. Andy does the talking but it is Amos who brings home the bacon. Andy, however, does not seem to appreciate that.

"Now there you is, Amos," says Andy, indicating that Amos' views and Amos himself are of very little consequence.

It is always Andy who handles the big propolitions, including the income tax. What makes that happy frame of mind on the part of Andy so interesting is the fact that it is so prevalent outside of the Fresh Air Taxicab Company of America.

ONCE upon a time, the customer, whether of a utility company or of any other kind of business, was regarded as not worthy of much con-

sideration; but for a quarter of a century there has been a decided reversal of this attitude.

Referring to the present day treatment of customers by department stores, Boris Emmet, in an article in the *American Mercury* of May, 1930, says:

> "The motto, 'The customer is always right,' is usually construed to mean that the store is always wrong, as a matter of good business policy. The wide-awake customer knows that he can make almost any store acquiesce in anything, irrespective of its reasonableness, as long as he is willing to go higher up. What the department manager may not grant will be granted by the Adjustment Bureau, and if the Adjustment Bureau says No the superintendent will say Yes, under sufficient pressure. By the time the complaint reaches the general manager the matter is usually settled to the full satisfaction of the customer."

The guest gets the same sort of consideration in first class hotels; and the customer of a utility company is coming to be regarded as the master of the house.

The customer is, of course, not always right and conversely the merchant is not always wrong. The slogan that the customer, like the king, is never wrong, is merely a bit of blarney—a pleasing dab of fiction, to flatter him and hold him in line. The cold fact is that the customer has no monopoly on angelic qualities including the disposition to be fair and to give the other fellows at least an even break. The customer is only a human being—no better or worse on the average than the merchant who sells to him.

But the customers popularly designated "the public" have been cajoled and patted on the back so long that, like Andy, they have come to regard themselves as the heads of the concern and the only factors in the business worthy of consideration. The pendulum of importance, instead of swinging against the customer as it once did, is now very far over on his side.

As applied to public utility business, instead of the slogan—"the public be damned," the slogan of a portion of the public at least has become: "The utilities be damned! Regulation be damned! The Supreme Court be damned! Everybody be damned except us!"

So granting the company the right to drive the taxi has become an act of "grace."

Suppose we analyze this quality of "grace" on the part of the public in granting charters to public utility companies. If the grant of a charter to a company to do business is an act of grace, what term is strong enough to characterize the granting of the extraordinary privilege of using the streets? Perhaps it should be considered as an act of supreme grace.

Now an act of grace is the bestowal of mercy or favor by one person upon another without thought of self. The flow of grace is wholly from him who grants it to him who receives it. The grace may overflow but nothing returns to the source of grace except a possible thank you. Nothing at least is expected. That is what makes the act so gracious.

But if a man steps into a tobacco store and exchanges a coin for a cigar it can hardly be said that he is on an errand of grace. That would be clearly nothing more than a materialistic commercial transaction in which both the smoker and the dealer profited. Both would be moved by a

selfish interest. Neither of them should be condemned for that, as selfish interests are perfectly proper. Still neither would have the right to claim that his conduct was so altruistic as to put it in the grace class.

If utility companies were not granted charters or the right to use the streets they could not do business. On the other hand, if these rights were not granted the public could not have the service. The granting of the right to serve is not the grant of something for which nothing is expected. The public's interest is as selfish as that of the corporation. It is as much of a commercial transaction as the sale of a bushel of potatoes.

If the owner of land wants a man to build him a house on it, the landowner has to grant the builder a right to enter upon the land. The contractor could not build the house without that privilege.

Why, then, should the landowner, because he grants the builder of his house the right to go upon his land for that purpose, set himself upon a pedestal and consider that he is conferring upon the builder an extraordinary privilege, which amounts to an act of grace? He merely grants the right to go upon the land because he could get the house in no other way. By granting that right he is serving his own purpose. It is true that the builder also benefits, but why should he be regarded as the sole beneficiary?

Many a city and village not supplied with electric service has wanted it just as many a landowner has wanted someone to build him a house. If the citizens desire that an electric company deliver service to their homes, they must, of course, allow it to enter upon the streets and the land to deliver it.

Why then should this be regarded as an act of grace?

The right to enter upon the streets is no more for the special benefit of the company than is the privilege granted by a landowner to a builder to go upon the land for the erection of a house a privilege for the special benefit of the builder.

It is usual to say that public utilities are granted the use of the streets and that this is an unusual privilege granted to no other kind of business. But this is not true. Where would the grocer, the butcher, the shopkeeper, or the manufacturer be if he had not likewise the privilege of using the streets?

A woman steps to the telephone and orders food and merchandise. She could not transmit that order if the telephone company had not been granted the right to use the streets. Neither could she have the food and merchandise delivered at her door if the grocer, the butcher, or the merchant had not an equally valuable right to use the streets.

Take, for illustration, two householders living side by side. One of them heats his house by gas and the other by coal or oil. Heat is what they both buy. The gas is delivered to the place where it is to be used for heating by means of mains from the gas holder through the streets to the lot line, then to the furnace by a pipe on the owner's premises.

The coal or oil is delivered from

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the headquarters of the coal or oil merchant through the streets, then carried to the cellar or storage tank over the owner's premises.

What is the difference between one form of delivery and the other? Both forms require the use of the streets. The only difference in the use of the streets for gas and coal and oil transportation is in the method of street use. The purpose is the same.

The streets have to be torn up when the gas mains are laid. But the streets also have to be torn up when the pavements are laid. Once the gas mains are down, however, the use of the streets by the gas company is much less inconvenient to the public than the use of the streets for the delivery of coal and oil.

Trucks have to be used to carry coal and oil. Every time this is done the street is obstructed to a certain extent. Its use is made more difficult for other purposes. In the delivery of gas, the highway is not obstructed at all. If all merchant and all pleasure vehicles used the streets as conveniently as gas companies do there would be no traffic problem. The same could be said of the use of streets by all other utilities except the surface transportation companies. Why then do we say that the use of streets by public utilities is more inconvenient and different from the use of streets by all other classes of citizens?

WHY do we make such a fuss about granting utilities the right to use the streets when the use of streets by utility companies is less disadvantageous to the general use for which highways are designed than is the use for other purposes?

Anyway the streets, when used to deliver utility service are used by the public, for it is the public which is served by that use.

Permitting a gas or electric company to enter upon land to make ice in the owner's refrigerator is no more of an act of grace than permitting an ice man to carry a chunk of ice upon the land to put into a refrigerator. Nor is the granting of the use of the streets to get gas or electricity to the lot line for refrigeration any more an act of grace than the grant of the use of the streets to the driver of the ice wagon. All of these uses are for the benefit of the public.

INCIDENTALLY, it might be well to call attention to another popular

misconception about utility service. Governor Roosevelt says that utility service must be used by all our citizens, rich and poor alike.

But why?

Not because the public has any natural right to that service but because the service has become so valuable that the public does not feel that it can get along without it.

To go back to the artificial ice business, for example. For years we were served by the ice man with his wagon which was the delight of small boys. Then along came gas and ice refrigeration. But before the ice man could be replaced by the gas or electric man the value of the new service over the old had to be demonstrated. The public has no natural right to artificial ice service. If it becomes universally used it will only be because it has made its own way on its merits in the world. It is so with other kinds of utility service.

Most of the utility services we now enjoy did not exist in Washington's time. The public had no natural right to them. These new services were created by men of inventive and commercial genius. They had to be sold to the public, often in the face of great opposition, just as artificial refrigerating service has had to be sold.

The fact that it is now thought that utility service must be used by all of our citizens, rich and poor alike, is a fine tribute to the vision and enterprise of those who conceived it and who have placed it within the reach of all, rich and poor alike.

It is the public which has been the beneficiary of utility service. It is a service which has been presented to the public, a service so valuable that rich and poor alike feel that they must have it. And, by the way, it is a service which was not created by the public or by the Federal or state governments, and turned over to the utility companies to be produced by them as agents of the public. It is Amos and not Andy who has done this work no matter what Andy says or thinks about it.

Utility service, instead of taking something from the public to which it is entitled, has presented something to the public. In doing that the utilities have made the public richer, not poorer.

Governor Roosevelt states that the public utilities have been granted a monopoly of service by an act of grace. Probably a good many persons will say amen to that.

But the monopoly privilege like the use of the streets was granted for the benefit of the public. It was granted in the expectation that it would produce lower rates and better service. Competition in the utility field is conceded to be wasteful and costly to the public. It is much better to have one telephone company in a city than two. Where two utility companies are serving in a field not rich enough to support more than a single utility, neither can give satisfactory service. A monopoly is given so that adequate service can be rendered by a single company and this is supplemented by regulation so that the prices charged for that service shall not be excessive.

The public, therefore, cannot read its title clear to grace by showing the grant of a monopoly privilege through which the public itself ex-

pects to gain an important advantage.

Besides, utility service is not strictly monopolistic. It is monopolistic in the sense that one company is protected from competition by another company of the same kind. If a gas company, for example, is serving a city satisfactorily and at reasonable rates, another gas company will not be allowed to come in. The same is true of an electric company, a telephone company, or a street railway company.

That does not mean, however, that a utility company protected from competition with companies of its own kind does not have to meet serious competition from the other sources. A large percentage of the electric business consists of the sale of power and commercial lighting. This is the greater part of the electric load of some companies; and this business is on a strictly competitive basis. There is nothing to prevent the owner of a manufacturing plant from using steam power or even electric power generated by himself. The owner of a large office building is not dependent upon an electric company for electric lighting. He may manufacture his own if he desires, and this is done in many cases. The only way an electric company can get this business is to bid for it on a competitive basis. If the electric company could not supply the service as cheaply as the owner of a plant or building could, the utility company would not get a contract for it. If it could not get this commercial business, domestic rates would be much higher than they are.

THE gas business is now a heating proposition. It is, therefore, in competition with coal and oil. There is plenty of coal and oil at the present time.

Presumably the gas people want to introduce gas for the heating of houses. This would tremendously increase their business. But they cannot hope to put gas heating plants in homes until the price can be brought down far enough to make the service attractive to householders as compared with the cost of coal or oil heating. It makes no difference whether the company's field is protected from the invasion of other gas companies or not. It will not get the house-heating business until it can outbid the coal and oil people.

Street railways have a monopoly of street railway business. They cannot, however, because of that fact charge what they please for street railway service.

The public is, therefore, not so much at the mercy of utility monopolies as many persons think. It has a double protection. Rates are regu-

¶ *"AT present in America the distinction between a public calling (a public utility business) and a private calling (an ordinary business) lies in the fact that a utility must serve all comers without discrimination at reasonable rates, while a private business concern can serve whom it pleases at any price it can get."*

lated both by State Commissions and by competition.

The impression Governor Roosevelt seeks to convey in the statement quoted at the beginning of this article is that public utilities are conducting themselves today as if they were private enterprises; that the 300-year old distinction between public and private callings has been lost sight of.

Nothing could be further from the truth.

UTILITIES within Commission control are subject to pretty close supervision. They cannot get into business without Commission consent. It is not certain that they can go out of business without Commission consent. In many states, they must go to the Commission before they can issue their securities. They must keep books as the Commission directs. Rates and service must be such as the Commission prescribes.

The fact is that the distinction between a public calling and a private calling is more marked today than it ever was.

There was no such attempt to regulate public callings 300 years ago, 200 years ago, or even 100 years ago, as there is today. Regulation has been extended further than anyone would have dreamed possible even 50 years ago. The fact that Governor Roosevelt would not regulate rates as courts say they must be regulated, does not mean that rates are not being regulated or that the public utility business is being conducted as if it were a private enterprise.

The 300-year old distinction to which the Governor refers was simply this:

Those who are engaged in so-called public callings, originally innkeepers, surgeons, common carriers, victualers, and a few others, by reason of the public nature of their business must serve all comers at reasonable rates. This rule did not apply to private callings.

At present in America the distinction between a public calling—a public utility business—and a private calling—an ordinary business—lies in the fact that a utility must serve all comers without discrimination at reasonable rates, while a private business concern can serve whom it pleases at any price it can get. This distinction is enforced at the present time.

To ask whether we are going to return to the time-honored distinction between public and private callings is like asking whether we are going to return to the time-honored habit of breathing. We do not have to return to the time-honored habit of breathing because we have never abandoned it.

The New York Commission between 1921 and 1928, inclusive, entered 11,440 formal orders in proceedings brought before it besides handling informal complaints at the rate of forty a day. Other Commissions are also active handling thousands of regulatory matters. This does not look as if the public utility business is conducted on the theory that it is a private enterprise.

Governor Roosevelt's question cannot be answered yes or no, because it assumes a fact which does not exist. It belongs to the same family as the famous question: "Have you ceased beating your wife?"

The Gas Man Robs the Undertaker

No. 6: Heroes of the Armies of Industry

Three incidents from the life of an industrial inspector that illustrate the value of accident-prevention training in serving the public welfare.

By ARMSTRONG PERRY

The undertakers' union ought to do something about Leonard J. Robertson, of St. Paul, Minnesota.

Robertson is an industrial inspector for the Northern States Power Company which supplies gas and electricity to the wide territory that is served by the industries and merchants of the Twin Cities.

In his routine work he cuts down the casket trade by preventing accidents. In sixteen years there has been no fatality due to gas equipment that he has inspected. And he is not satisfied with that. He goes right on cheating the grave diggers in his time off, and even during vacations.

Robertson took his family to Chicago in the family bus. There are two boys, a girl, and their mother. They went out for a walk in Lincoln Park. Jerry, the oldest boy, reported that he had just seen a little girl fall into the fountain near the conservatory.

They all ran in that direction. They saw the little girl bobbing up and down beneath the surface of the water. Robertson threw off his coat. As he vaulted over the rim of the fountain he noticed that the basin was shaped like a great bowl. The sides sloped sharply. They were covered with slime. The child had left marks in the slime as she slid into the water head first, trying to check her descent with her hands.

Robertson reports that he found the surface of the water to be about four inches above his head when he stood on the bottom with the child in his arms. He tried to walk up the slope to the rim of the basin, but it was like trying to climb a greased pole. By jumping he could bring his own head and that of the child up into the air. Weighted down as they were with their wet clothing, he could not stay up for any length of time.

A man appeared, looking over the edge. He was taller than any member of the family, all of whom were doing their best to help.

"Give me a hand!" shouted Robertson.

The man continued to gaze, as

calmly as he might look at the seals in their pool at the zoo. He gazed, and did nothing more.

Then, fortunately, a passing laborer was attracted to the scene. Only one glance showed him what was needed. Off came his jacket. Holding fast to one sleeve he tossed the garment into Robertson's outstretched hand. Clinging to the jacket, Robertson was able to climb the slippery slope.

Willing hands relieved him of his burden. As he clambered dripping over the rim he noticed that the man who had refused assistance was immaculately dressed. His pearl colored spats seemed to put him in the "dude" class.

THE child was unconscious, but a little draining and prone pressure resuscitations, such as the gas utilities teach their employees, soon restored her. A twelve-year-old girl, whose carelessness appeared to have been responsible for the accident, hurried away with the youngster as though she had a premonition of a spanking to come.

TWO days later the Robertsons were driving through a Chicago suburb on their way home. A brand new Buick shot past their car, doing about fifty-five. It swung back into the right lane, and began to wobble. The wobble increased. Then the car grazed a pole, went into a swamp and turned over.

Robertson pulled up near the wreck and waded in. The wheels of the Buick were in the air. The engine was purring as though nothing had happened. Gas and oil were pouring over the driver and onto two elderly women who were in the rear seat.

All that was needed to make the accident a front-page story was a spark, and that might come from the ignition any second. Mrs. Robertson reminded Mr. Robertson that gas tanks sometimes explode.

"Shut off your motor!" Robertson shouted to the man upside down at the wheel.

The man made some feeble movements, but seemed to be in a corner and unable to get out.

There were several things to be done and any of them might be too late. Robertson took just a moment to analyze the situation.

One rear door was blocked. He decided to break the glass in the other rear door—and found a woman's face pressed against it so tightly that the window could not be smashed without cutting her dangerously.

Then Robertson tried a front door. Through this he reached the ignition key and turned it. He pulled out the driver, a man of middle age.

THE ladies then were extricated. One came out cool and collected. The other old lady had broken a shoulder. A jagged end of bone protruded through her clothing. The Robertsons rendered first aid—an accomplishment he was taught by the gas company—and remained in charge until relieved by the authorities.

THE attempt at life saving most nearly in the line of his duty was made by Robertson in the home of a neighbor, across the street from his own residence.

William F. Harvey, the neighbor, went into his cellar to wash some bot-

tles. What kind of bottles they were is not stated. Near him was a gas heater. It had been installed without a flue. Before long Mr. Harvey passed peacefully under the influence of carbon monoxide.

He was alone in the cellar. There was nothing between him and heaven except the kind of lucky coincidence that causes hardhearted editors to bawl out fiction writers who try to remain loyal to life as it is.

The picturesque element in this coincidence was a watermelon wagon, driven by a leather-lunged huckster. He happened to come along just as Harvey was sleeping what soon would develop into his last long slumber.

The second element in the situation was Harvey's dutiful wife—and let us pause here to admonish all wives that shooing away a huckster who is selling their husband's favorite fruit may be fatal, one way or another.

MRS. Harvey was not strong. It would have been excusable if she had waved the watermelon man on his way instead of going down the cellar stairs to consult her husband. But, good wife that she was, she went to ascertain the wishes of her spouse.

She found him lying on the cellar floor. He showed no sign of life. A strong odor of gas gave her the clue to the situation.

She was not strong enough to lift her husband. She hurried out and called for help. Leonard Robertson, off duty and at home, heard her tremulous outcry. He ran to her assistance, grasped the meaning of her frightened, disconnected words, followed the direction that she pointed out.

Robertson knew the chance he took in going into carbon monoxide. Long experience as a gas man had taught him that. He knew that this gas did its deadly work so quickly that its victims seldom knew what happened. This knowledge did not retard his actions. In he went, and in a few moments he was out again, with his man.

Robertson's brother, George, joined him. They laid Harvey on his stomach and applied the prone pressure method of resuscitation.

The neighbors gathered. In the group were several women. As they watched Robertson, sweating at his task, they began to feel that he was not doing the right thing.

"You're hurting his back!" one remonstrated.

After a while a doctor came. He said that Robertson was doing all that anyone could do, and more than could be done with a machine for artificial respiration. He encouraged Robertson to keep on.

Fifty-five minutes passed before Harvey showed signs of life. After he was able to breathe for himself, four days in a hospital restored him to normal condition.

Officials of the Northern States Power Company investigated. Then they recommended Robertson to the American Gas Association for one of the McCarter medals. The medal and certificate were awarded in due time.

When interviewed at his home for PUBLIC UTILITIES FORTNIGHTLY, Robertson was in danger of having to perform another rescue. He was painting a set of chairs and a maltese kitten was cavorting around, waiting for the job to be finished so he could walk on it.

As Seen from the Side-lines

WHEN Senator Grundy enumerated the Western "backward states," they promptly responded that New England is decadent.

Now, nothing could be farther from the truth.

* *

RISKING that Mr. H. L. Mencken may avidly seize these lines for his dreadful "Americana," we venture to assert that in the measure of their age, their areas, their population, and their opportunities the American States, far from being either backward or decadent, have accomplished the greatest progress in cultural and material prosperity which the world has seen.

* *

THEY have attained their fulsome state in such a short span because even the restrictions imposed against individual liberties imposed upon them by arbitrary legislative assemblies and yielding executives have not deterred their determination to make out their own lives according to their notions.

* *

PUBLIC regulation, in the interest of which these columns are devoted, was conceived in the spirit of conserving the liberties of the public, or, in other words, of preventing their rights from being transgressed.

* *

IN this respect, the New England States, far from being decadent, are today demanding all manners of extensions of public regulations.

* *

THEY are yelling for them with such lust and abandon that they are in danger of acquiring a sore throat that will reach from Moosehead Lake to Long Island Sound.

* *

MASSACHUSETTS, as the apt illustration, regulates the hours of labor and the conditions of employment to a more sizable extent than any other commonwealth in this Nation, not excluding either Wisconsin or New York.

* *

HER public utilities laws constitute the model adopted by many of her colleagues.

* *

HER election laws regulate the expenditure of campaign funds in a manner that seems to make the Illinois and Pennsylania conditions impossible.

* *

AND now she is in the mood to demand the enactment of a new code of laws which can possibly prevent gullible and innocent persons from being mulcted in shady, phony, and outright fake stock transactions.

* *

IT seems that fifty millions of dollars a year are extracted from the gullible section of the population up there. The Governor, the attorney-general and the business interests which are respectable manifest their alarm in the situation. Tidy fortunes, nest eggs, and paltry family stakes are being wiped out. Money that could be devoted to honest business is being caught in the web of worthless securities.

* *

THE state has a Blue Sky law and, interestingly enough, it relies for its enforcement upon the State Department of Public Utilities, which regulates the railroads, railways, motor busses, telephones, and telegraphs.

* *

DESIGNED to eliminate the dangers of speculation, it seemingly has promoted it. The sale of a security is required to be licensed. The stock salesman, too, must receive a license from the commonwealth. With the result that the salesman takes his phony stock into the

home of a trusting person and exhibits its license and his license as the seal of its reputed high value.

* *

THE state has assumed the responsibility of protecting the public against their own gullibility and it now is pressed by the necessity of being effective. "There is plenty of law now," says the Stock Exchange representatives in the face of a demand for expansive amendments. "Make the administration of it effective by increasing the staff of the Public Utilities Department."

* *

So, the decadence of Massachusetts is reflected by the aggressiveness of its citizens who demand either a larger or more effective measure of regulation. It is an axiom of government, or at least it ought to be, that virile demands for extension of governmental powers are not a sign of depreciating mentality.

* *

NOT to be outdone in this spirit of regulatory demands, the people of Boston insist that a power should be lodged to curb "the abuse" of radio reception. A year ago the people were complaining that reception was inadequate. Now, it seems, there is too much of it. The loud speaker disturbs man's peace of mind, the serenity of his home, and the atmosphere of his neighborhood.

* *

So, a criminal would be made out of the man whose radio broadcasts or emits loud noises in excess of fifty feet. Such a code, of course, is unenforceable. It would require a cop to stand outside every house in the state, with a fifty-foot rule in his hand, and with his ear attuned to every shifting breeze. If he were hard of hearing, that would be our good luck. But if we tuned in on Rudy Vallee when his heart was set on Amos 'n' Andy, he doubtless would swear our lives away.

* *

NEVERTHELESS, the spirit of more regulation arises and it becomes the antithesis of that alleged mental decadence.

Neighboring New Hampshire exhibits its truculence. Its Public Service Commission is told by the court that it must cease its inquiry into the financial structure of the holding corporations that have steadfastly acquired ownership of its public utilities. In fact, an injunction against its elaborate inquiry is issued by the Federal courts, no less.

* *

Now, an injunction is a solemnly serious document and it causes its average recipient to pause and then to yield to it, if grudgingly. But the duty of the Commission, as the Commission sees it, is quite another matter. We have it on good authority that the Commission has dropped the injunction into one of its desks seldom opened and has gone ahead with its probe. Illustrating that these New Englanders take their regulatory laws with a seriousness that would confound even the son of a wild jackass. Mr. Chief Justice Hughes and his associates ultimately will be required to give thought to the ethics and rights of this situation.

* *

IN the interim the good people of Boston give thought to the question of whether they shall acquire the Boston elevated street railway from its private owners. The Elevated, quite the largest and most important street railway system in the northeast, is now operated by the public, in the sense that its policies are determined by a board of managers appointed by the Governor. That adventure was taken in compliance with the surging spirit of public regulation.

* *

WHETHER the present system will be retained, whether the Elevated shall be returned to its private owners, or whether the public shall go the whole distance of public ownership are the questions to appear upon the ballot this Fall. Decadent indeed! People up that way are always thinking up things to keep their minds busy.

John T. Lambert

What Others Think

What the Commissions Are and Are Not Accomplishing

An enormous number of regulatory questions are being handled by State Public Service Commissions. Very few of these receive public attention; it is only an occasional case which gets into the newspapers.

Referring to the number of cases handled by the New Jersey Commission, Commissioner Charles Browne has recently said:

> "The Board hears some 1,200 cases yearly at its offices in the Industrial Building, Newark, in the state house in Trenton, and in the court house in Camden. Through the efforts of the heads of the departments and inspectors, perhaps as many more cases or complaints are settled out of court."

The cases settled "out of court" are often important. Rate reductions that run into large savings to the ratepayers have resulted from this inexpensive and expeditious method of settling controversies.

Many of these cases settled out of court relate to minor matters, as far as the public is concerned, but are important to the customers involved. They are called "informal complaints." The regulation machinery may be set in motion by the mailing of a letter to the Commission. The New York Commission receives an average of 40 informal complaints a day, which require adjustment through the office of the Commission.

Speaking on the same point before the Academy of Political Science, April 11, 1930, William A. Prendergast, former chairman of the New York Public Service Commission, said:

> "The critics and detractors of the electric industry at first undertook to attack that most successful of our industrial enterprises by asserting that proper vigilance was not being exercised over rates and charges, because there had been a breakdown in the administration of the regulatory Commissions. They have since shifted their ground and now allege that the function of the Commission should be that of a prosecutor of the utilities. This was not the original concept of the character of the Commission, is not now the proper concept, and never should be. It is obvious that if the Commission is to represent only the customers of the utilities and act only in their interests the sole source of protection the utilities will have is the courts, and this will result in making the courts an even greater influence in the determination of utility problems than they have ever been before. It will thus aggravate the very condition that Commission and utility criticis have been denouncing, namely, that there has been too much recourse to the courts upon questions that should be decided by the commissions.
>
> "The issue thus raised is one of supreme importance, and it must be met and settled by direct and definite arguments and methods. There is always a disposition on the part of politicians to pander to what they believe to be public sentiment against capital. In fact, this is a favorite game of legislators and other office-holders. This attitude must be curbed by frank discussion of economic questions and a determination to assert the mutual rights and interests of capital and those whom it serves, in other words, the public. In this way we shall be maintaining the sound principles of American business and American justice. If justice is denied, business will suffer. If business suffers, the public is the victim."

Mr. Prendergast lays down the following general principles, by which, he says, Commissions should be guided in the performance of their administrative duties:

> "1. The consumer is entitled to just and reasonable rates for the service or commodity he buys from the utilities.
>
> "2. He is equally entitled to ample serv-

ice and every possible measure of safety in the supplying of that service.

"3. It is the duty of the Commission to see that the consumers are given adequate protection in the enjoyment of these rights.

"4. The property of the utility is private property, devoted to a public use, and the investors in that property are entitled to every protection of the law (equally with the consumers) and to a fair return upon their investment.

"5. Their investment is entitled to protection against the unfair attacks of politicians and self-seeking complainants, and they have a right to look to the Commission for this protection.

"Unless the interests of the consumers and utilities receive equal protection both will be harmed. If the utilities are subjected to unfair attack their credit will suffer, and this will prevent their attracting the required capital with which to give good service and extend their operations. If this happens the public is the sufferer."

ONE misconception of those who say the Commissions should represent the public, is as to who constitutes the public.

It is assumed that the ratepayers are the public, when as a matter of fact the ratepayers' interest is as much of a private interest as that of the stockholders of the company. The public is composed of the people of the entire state to whose interest it is to have controversies between utility companies and their stockholders settled in a fair and impartial manner. It is the interest of the public, not the interest of the ratepayers, that the Commissions were created to protect.

The State Commissions are much more than rate-making bodies. The great bulk of their work is performed without publicity. It is only the occasional rate case that the public takes note of. As to rate making, the Commissions are not praised when they reduce charges, but they are quickly criticized if they do not. Answering such criticism, Mr. Prendergast said:

"The legislature has the power to fix maximum rates. Nevertheless, such power is not inherently and exclusively legislative. To the Commission has been entrusted the duty of ascertaining facts and after a public hearing determining what is a reasonable maximum rate. And the Commissions in these cases act *quasi*-judicially.

"In many of its duties the Commission is an administrative fact-finding body only, and to assume that it is wholly either administrative or *quasi*-judicial is to start in a wrong direction. Most critics of utility regulation have no idea of the character and amount of work performed by regulatory Commissions in the larger states. They invariably argue that the Commission's most important function, and to their mind the only function, is that of fixing rates. As a practical matter—and I speak of the New York State Commission alone, although I am sure the record of the work of other Commissions in the larger states would be substantially the same—rate cases constitute a small percentage of the proceedings heard in the course of a year by the Public Service Commissions. Millions of dollars in security issues are reviewed and authorized by the State Commissions. Thousands of proceedings involving the right to exercise franchises are heard. More than fifty informal complaints as to the service of utilities are adjusted every day by the New York State Public Service Commission. Continuous tests are made as to the quality, safety, and proper purveying of the products of utilities. And the critics who, as I say, seem to base their judgment on the handling of rate cases, although I have never known of a single instance where the lowering of a rate was publicly praised, argue that regulation is a failure because certain rates have to be increased or not arbitrarily reduced.

"When the Commission acts upon its own initiative, as it very frequently does, and proceeds to take testimony and hear and determine contested questions of fact and fix rates, and decide in the same manner the form of rate orders, and even pass on joint rates and distribute joint fares between connecting carriers, the questions are more than administrative or ministerial ones. The order must be and is judicial in its character. So I think we can safely assume that whether the proceedings before a Public Service Commission are to be regarded as legislative or otherwise does not depend so much upon the character of the body before which they have taken place as upon the character of the proceedings themselves. And it is easy then to see that the power granted to and exercised by the Public Service Commission includes a great deal more than may be strictly defined as the legislative act of fixing rates."

THE New York Commission from 1921 to 1928, inclusive, made 11,440 formal orders in proceedings brought before it, an indication that the Commissions are doing an enormous amount of work which gets no newspaper publicity.

Mr. Henry C. Spurr, editor of *Public Utilities Reports,* in an address before the Academy of Political Science, recently brought forth some interesting data on the way the Commissions were doing their work. His address betrayed a long and painstaking research into the field of Commission regulation. He says:

"Some time ago I asked the Commissions to estimate the savings which had resulted from decreases in gas and electric rates for the last five years through the efforts of the Commissions. Here are some of the estimates furnished by the Commissions.

"California, five years, $6,500,000 (cumulative savings not estimated).

"Georgia, for the last two years, $1,500,000 per annum.

"Indiana, reduction in electric rates for five years, $6,000,000. Reduction in gas rates for the last two years, $200,000.

"Maryland, conservative estimates of savings to gas and electric consumers since 1923, range between $13,000,000 and $14,000,000.

"Michigan, savings through rate reductions in five years, $14,597,388 for electric service, and $1,175,171 for gas service.

"Missouri, reductions in rates since 1928 through formal investigations and conferences with utility operators, over $2,000,000 a year.

"New Jersey, estimated savings to gas and electric consumers for 1929, $8,134,810, based on production over a period beginning in 1924.

"Pennsylvania, savings of approximately $25,000,000 a year over rates that were in effect in 1914.

"Oklahoma, estimated savings, $3,730,000.

"Utah, savings approximating $1,000,000.

"Virginia, savings for five years, $2,675,000.

"Henry A. Frazier, recorder of the California Railroad Commission, says that for every dollar expended by the Railroad Commission in regulating the utilities, there have been returned to the ratepayers $7 in reduced utility charges, irrespective of any savings accruing because of the refusal of the Commission to sanction requested increases in rates or because of the part played by the Commission in winning substantial reductions in interstate rates.

"Certainly a return of seven dollars on every dollar invested is a handsome profit for the public on the regulatory enterprise. And we could hardly say that Commission regulation is a failure even if we thought it should have produced a return of eight dollars instead of seven on every dollar invested."

COMMENTING on the charge that the Federal courts were interfering with Commission regulation, Mr. Spurr stated:

"How far have the Federal courts interfered with the proper functioning of the Commissions, on the theory that the Federal court decisions are wrong? The utility companies have been represented as rushing headlong into the Federal courts to thwart the State Commissions. This has even been said to be an interference with state rights. Statements of this sort not only show a lack of understanding of the value of fundamental liberties which the courts protect, but they are a gross exaggeration of the situation.

"Take New York state. From 1921 to 1928, inclusive, the New York Commission entered 11,440 formal orders in proceedings brought before the Commission. Of these 11,440 cases only three were appealed to the Federal courts. Only two involved the question of rates. This does not appear to be a very serious interference on the part of the Federal courts with the functions of the State Commission in New York. The same is true in other states although in varying degrees. Chairman Henry C. Attwill, of the Massachusetts Department of Public Utilities, has said that since 1869 Massachusetts has attempted to regulate railroads and railways by Commissions, and since 1885 gas and electric companies. He doubts that in all that period of time the decisions of the Massachusetts Commission have been reversed by appeals to the courts more than ten times. The present Department has been reversed but once and the Chairman declares that in rate cases he knows of no instance of reversal."

MR. Spurr punctured another popular bubble when he analyzed the charge that the ratepayers are handicapped by the assumption of the "judicial rôle" by the Commission. His facts and figures are surprising, as well as interesting. He states:

"It is charged that the tendency of the Commission to assume the judicial rôle puts a handicap upon the ratepayers because they are not able to hire as high-priced lawyers and experts as the utilities. But if we judge by the results of the Commission decisions, the supposed handicap has not been very serious. The dissenting opinion of Mr. Justice Brandeis in the Southwestern Bell Telephone Case has been regarded as the ratepayers' Magna Charta. In support of his opinion, Mr. Justice Brandeis cited 363 cases decided by the

State Commissions from 1920 to 1923. Of these, 358 were in support of Mr. Justice Brandeis' views, and only five were opposed. This is not a very bad record for handicapped ratepayers before "judicially minded" Commissions. The fact is that notwithstanding any supposed disadvantage the ratepayers may labor under by reason of lack of legal and technical talent, they have more often been successful before the Commissions than the utilities in contested cases."

In summing up, Mr. Spurr found the balance hanging quite heavy in favor of Commission regulation, stating:

"All things considered, I think the Commissions have functioned remarkably well as originally intended. They have eliminated local politics in regulation. They have to a large extent prevented arbitrary legislative action. They have protected the public and the utilities from wasteful competition. They have eliminated discriminatory practices. They have established uniform accounting and reasonable standards of service. They have adjusted an enormous amount of complaints, and thereby not only satisfied utility customers but helped to build up better public relations between the utilities and the ratepayers. By a broadminded policy of dealing fairly with the utilities as well as their customers the Commissions have accelerated the flow of capital into the utility field and thereby hastened development. They have not hesitated to increase rates as well as to decrease rates when necessary. They have not blocked development of the service. In a word, they have made a tremendously important contribution to the public welfare."

A HASTY glance at all contemporaneous utterance on this subject would seem to reveal that there has been a let-up in the spirit of Commission baiting which was so epidemic throughout the land a year ago. This spirit seems to have changed. It seems to have assumed a more constructive character. Critics seem to be acknowledging that the failures of Commission regulation in the past might be due to other causes than the break down of the system itself.

Are the Attacks on the Utilities Inspired by Socialist Propaganda?

THE establishment of uniform accounting practices is commonly considered to be one of the beneficial results of state regulation of public utilities. Uniformity within the states did not mean uniformity throughout the country. Therefore, the National Association of Railroad and Utilities Commissioners, at their convention in 1919, adopted a resolution authorizing the committee on statistics and accounts of public utilities to formulate a uniform system of accounts for public utilities other than railroads. This committee was well qualified for its work and called in for consultation accounting experts of the American Gas Association and the National Electric Light Association. At the convention of the National Association of Railroad and Utilities Commissioners in 1920 the uniform classification of accounts for gas and electric utilities was presented which was later approved by the national utilities associations. These classifications are in use at the present time.

The classifications have not been seriously criticised except by the anti-utility group, who say that it is inadequate because it fails to carry cost accounting as far as it should.

Answering this charge, Henry M. Brundage, chairman of the committee on uniform classification of accounts, American Gas Association, recently said:

"It is possible to hazard a guess as to the reason why recommendations for a detailed cost system of accounts met with such hearty approval by the legislative Commission. Earlier in the sessions, they had heard the testimony of Mr. Lewis Goldberg, a member of the Massachusetts Department of Public Utilities, who told

about the Worcester case, in which the Commission made a rate order, which was carried to the Federal court and sustained by a master. The case never went any further.

"In that case, the Commission appraised the property on the basis of cost, which is the Massachusetts practice, in spite of the law of the land, and apportioned its whole value between power rates and lighting rates, although the data for such apportionment was meagre and unsatisfactory. It also apportioned the operating expenses to each class of consumers. Rates to lighting consumers were fixed on the basis of the value of that part of the plant which was estimated to be used in their service and thus allow a fair return on the investment used for them. Rates to power consumers were established at the same price as those charged domestic consumers, although that price was greater than the company received or could charge, because power was furnished on a competitive basis.

"It is well understood that there are peaks and valleys in the demand for electric service, and that during the hours of low demand the producing plant will be comparatively idle unless current can be sold to power users at low rates. If the whole business of the plant were its power business, it would be forced to operate at rates so low as to give no return whatever on the investment. Consequently, if an apportionment of plant investment and expenses could show investment and expenses of each class of consumers and if rates could be adjusted on the basis which was adopted in the Worcester case, State Commissions would have a powerful instrument for reducing rates *to the greater number of voters.* That plan was approved by the master in the Worcester case but was never argued before the court. Is that what the 'intellectuals' have in mind, when they urge that the utilities be required to report costs in greater detail?

"If rates are to be fixed on such a basis, it will be necessary for electric companies to discontinue much of their supply to power users. In the case of small communities, sustained largely by local industries, dependent upon low rates, it might result in closing the plants, throwing large numbers of wage earners out of employment and increasing rates to domestic consumers many times over."

MR. BRUNDAGE sees in these attacks against the industry a hidden drift toward Socialism. He said:

"It is just as well that we recognize a general drift toward Socialism, so that, if that is what the people want, we may as well accept it, but, if it is not what they want, they should be made aware of the drift and of the fact that Socialism advances, not so much through measures which are labeled 'socialistic,' as through laws sponsored by both of the two great political parties, who give no credit to the real authors of the ideas embodied in such laws.

"In this direction are the continued vicious attacks on public utilities. When charges of propaganda were made against them to the Federal Trade Commission, the utilities offered to show that they were defending themselves against widely published false charges of which the authorship was not disclosed, but which could be traced to writers identified with the socialist party. The Commission ruled out documentary evidence offered by the utilities as immaterial, but there has been recently published by the National Electric Light Association a 96-page pamphlet entitled: 'The Radical Campaign against American Industry.' Straight-forward appeals for a socialistic state are entitled to consideration and respect, but it is otherwise with concealed attack and proposals for measures which are advances towards socialistic objectives, but which do not appear to be such to the great number of voters who are uncritical or uninformed. Subtly in line with such attacks are proposals to reduce rates by substituting cost for present value; to allow as permissible earnings no more than an amount equal to interest on bonds, dividends on preferred stock and a reasonable return to common stockholders, on no more than total cost of the property diminished by the amount of bonds and preferred stock; proposals to compel the accumulation of depreciation reserves and deduct the credit balance from total cost, in determining the rate base; proposals to invade the field of management in all directions.

"Against this drift, it behooves the utilities to put forth their best effort."

It would seem to be the point of wisdom for the utility industry not only to present the facts about the business to the public but to keep on presenting them; and not to be deterred by charges of propaganda.

One writer has recently said that the public has gotten the idea that the utilities have something to conceal. That is probably not a general impression, but even if it exists to a small extent it should be corrected.

"THE WHY, WHOM, AND WHEN OF THE NATIONAL CLASSIFICATION OF ACCOUNTS FOR GAS AND ELECTRIC UTILITIES." Address by Henry M. Brundage before the Wisconsin Utilities Association, June 19, 1930.

The Bogy of "Big Business"

IN his book on "Millions In Mergers," H. A. Toulmin, Jr., asserts that if there is any one certain road to success in mergers, which he terms "skyscrapers of business," that road rests on the solid foundation of public service. He declares that the public service cause is not altruistic, but that it is the soundest scheme in all merger policies.

He points out that mergers for excessive prices, mergers for dumping watered stock, mergers to hog raw materials, mergers to avoid research, mergers to retain obsolete equipment, all fail—as witness the tragic disasters of the Glucose Combination, the National Cordage Company, the Starch Consolidations, the United States Leather Company, the National Salt Company, the American Malting Company, the Shipbuilding Company, and the New England Cotton Yarn Company.

This belief is several times expressed. He maintains that a merger's success always has and always will depend upon the degree in which the organization renders a public service. That it is a question of net profit both to business and to the public; that investing has become so nation-wide that in a few years, business and the public will become one. Again he says:

> "Mere size, mere percentage of trade, mere control of gross capitalization, these are not primary factors in merger profit and success. It is the way that the property is conducted for the public benefit that counts. A much closer scrutiny and a higher standard of conduct will be applied to mergers as they acquire greater power for either good or evil."

MR. Toulmin believes that no matter what the purpose of the merger may be after it has once been effected, it inevitably becomes a public institution and has to live up to reputation accordingly. He says:

> "In just the proportion that a great corporation deals with the fortunes and lives of vast numbers of people, in such proportion is the management put under a deep moral obligation to continue such a public business as a public trust. The fate of future mergers rests solely in devoted management, a sense of sportsmanship and fair play of the executives and directors of great corporate aggregations of capital."

This is undoubtedly sound doctrine. If all mergers were for the purposes some critics assign to them, they would be doomed to failure. Honesty of purpose is not only a better policy than dishonesty, but it is the only highway to success.

Furthermore, this fear of big business, the bugbear of a generation or two ago, seems to be rapidly disappearing, not only in the public mind, but also in the legislative mind. The movement to suppress it legally has not been very successful. The merger movement is on the upward swing in the field of private business in spite of the Sherman anti-trust law. Regulated monopoly in the public utility field is recognized as proper.

Referring to the activities of those responsible for the enforcement of the Sherman laws, William R. Basset says:

> "There can be little doubt but that public opinion at present has lost much of its fear of mere size in a business. What it fears, rather, is misuse of the power which great size gives, to the end of preventing freedom of trading, through making it impossible, by fair means or foul, for competition to arise and succeed in the face of monopoly.
>
> "This is shown by the prosecutions brought by the government under the anti-trust statutes.
>
> "From 1890 when the Sherman Act went into effect, until 1927, only a fraction less than 22 per cent of the suits brought by the government were based chiefly upon the fact that the defendant was a consolidation of competitors. Still more significant is the fact that although, in the early stage of the anti-trust laws from 1890 to 1917, 37.8 per cent were on primarily the grounds of merger, in the next ten years merger as such accounted for only 7.6 per cent. That indicates a trend in public opinion away from the idea that size alone is something to be feared.
>
> "As a matter of fact, there can be no doubt that the ablest business men have learned that unfair, unscrupulous, and predatory attacks upon competition are nowhere nearly as effective in making profits

as skilful, economical operation. It may be that business men have suddenly seen the light and become converted to a high standard of business ethics, or, as seems more likely, it may be merely enlightened self-interest that dictates today's policies and methods. However, it is a fact apparent to the thoughtful observer that unethical practices are far more common in small business than in big business.

"Generally speaking, the courts seem to understand that modern business mergers are most often formed for the sake of realizing perfectly proper advantages, usually in the way of economies of production, distribution, and administration, and that these advantages redound not only to the benefit of the consolidations but to that of their employees and customers—which is to say, the general public.

"Commonly, therefore, the mere size of a merger or the extent to which it controls the total production of an industry is not a criterion of whether the merger is legal or not. Rather does the court base its findings upon the basic object of the merger and its behavior toward customers, competitors, and employees.

"Of late it has become rather common practice for the sponsors of a proposed merger to submit their plans to the Department of Justice for an unofficial opinion as to the probable legality of the merger. Such opinion is usually freely given, but it does not prevent the government from initiating suit later.

"On the whole it can be safely said that under the present state of public opinion even competitors can safely merge, provided they are prepared to show that they have no illegal intent and that they have reason to believe that as a result of merging they will be able to render better service at no higher price than they could as independent concerns."

ECONOMIC laws are hard to set aside. There is no doubt but that there is a solid reason for mergers and consolidations, or else there would not be so many of them. There are also undoubtedly evils and pitfalls to be avoided, but on the whole the present trend is unquestionably an advantage to the public. Production and distribution at the least expense to consumers is a worthy aim.

Going into the effects of consolidation on the electric industry, recent observations of Charles F. Marsh on the collective bargaining aspect of mergers seem optimistic. Mr. Marsh is an instructor of economics at the American University at Washington, D. C. The collective bargaining angle of consolidation has not received much attention, but Mr. Marsh has done his share to bring it forth. He says, in part:

"The continued fusion of these small companies into systems of companies and the fusion of these systems into larger systems has resulted in the organization of the industry into a small number of systems operating on a national scale. Except in certain cities where local conditions have strengthened the bargaining power of the local unions in some manner, the influence of the Union has declined as consolidation in the industry has increased.

"Consolidation has affected Union influence in the industry both directly and indirectly. The direct effect has been the decline in the bargaining power of the local union relative to that of the formerly independent companies. Indirectly, it has facilitated the development of the company union movement and other movements calculated to build up the loyalty of employees to the companies. Only those companies with great financial resources have been able to establish industrial relations departments and the numerous employee services, such as stock ownership, pensions, insurance, educational plans, etc., which have almost always been closely associated with employee representation or company union plans. As small, independent companies have become parts of large, centrally controlled systems, the company union movement has spread to these companies. Some of the members or prospective members of the local unions employed by companies having a strongly developed company union have been attracted to these company organizations and voluntarily dropped their trade union membership.

"A larger proportion have left their trade union and joined the company union because they were compelled to do so in order to hold their jobs.

"This decline in the influence of local unions has prompted the Brotherhood or two types of action. The first is more or less a continuance of an established method of increasing Union strength. That is, local unions and International officers have embarked on intensive organizing campaigns. The second type of action is of a distinctly different nature than any action taken by the Union in past years. The International officers have been empowered to carry on negotiations with leaders in the industry, looking forward to a national understanding. The desired understanding would amount on the one hand to a recognition of the Union. On the other, it would amount to a recognition by the Union that co-operation should take the

place of strikes. Nothing of a definite nature has been accomplished as yet toward securing such an understanding."

REGULATION of rates may also have something to do with the reasonableness of the wage scale. Mr. Marsh says:

"The tardiness of Public Service Commissions in granting rate increases during periods of rising prices sometimes made it impossible for companies to grant the demands of the Union for higher wages. In this sense, rate-fixing bodies have tended to make it more difficult for unions to increase wages and improve working conditions. On the other hand, some companies have obtained rate increases during these same periods because of increased labor costs. In this sense, then, the Commissions have tended to make it easier for trade unions to secure higher wages in the industry. In general, however, it is difficult to trace any direct relation between the rate orders by Public Utility Commissions and the effectiveness of collective bargaining activities by trade unionists in this industry."

How far the Commissions have the right to go in declaring wage scales unreasonably high is an interesting question, which has as yet not been settled. Commissions have not hesitated to declare salaries paid high officials to be unreasonable. If they have the power to do this, they would undoubtedly have the power to declare wages of employees unreasonably high.

COLLECTIVE BARGAINING IN ELECTRIC INDUSTRY. By Charles F. Marsh. *The Journal of Land and Public Utility Economics,* May, 1930, p. 142.

MILLIONS IN MERGERS. By H. A. Toulmin, Jr. New York: B. C. Forbes Publishing Company. 323 pages. $3.50. 1930.

OPERATING ASPECTS OF INDUSTRIAL MERGERS. By William R. Basset. New York: Harper & Brothers. 205 pages. $3.00. 1930.

Publications Received

TELEVISION TODAY AND TOMORROW. By Sydney A. Moseley and H. J. Barton Chapple. New York; Isaac Pitman & Sons. 130 pages. 1930. Price $2.50.

PROBLEMS IN PUBLIC MANAGEMENT. By Philip Cabot and Deane W. Malott. New York; McGraw-Hill Book Co. 632 pages. 1930. $6.00.

Other Articles Worth Reading

ACCOUNTING FOR FIXED CAPITAL ASSETS IN A PUBLIC UTILITIES. By J. Q. Ewing. *Gas Age-Record;* pages 973–975. June 28, 1930.

COLUMBIA AND UNITED. *Fortune;* pages 79–82. July, 1930. This article points out why the Columbia Gas & Electric and United Corporation might have been industrial enemies, and how they became, instead, industrial friends.

CUSTOMER OWNERSHIP. By A. F. Hockenbeamer. *California Journal of Development;* pages 17 and 54–55. June, 1930.

HOW U. S. SUBSIDY HELPS CITY PLANT. *Public Service Management;* pages 5–8. July, 1930.

INTERCONNECTION OF POWER TRANSMISSION AN ECONOMIC ASSET. By P. M. Downing. *California Journal of Development;* pages 20–21 and 57. June, 1930.

MERCHANDISE FROM PUBLIC RELATIONS STANDPOINT. By J. C. Smith. *Gas Age-Record;* pages 989–990 and 992. June 28, 1930.

VALUATION. By Richard Sachse. *California Journal of Development;* pages 306–309. June, 1930.

This article deals with some thoughts on the valuation problem in the light of the most recent Supreme Court decisions.

"NO POWER TRUST" FINDING IGNORED BY RADICAL PROPAGANDISTS. *Public Service Management;* pages 9–13. July, 1930.

COMMISSIONS could not fix wages which would be binding on employees, any more than they can fix a rate of return which will be binding on capital in the long run. Services of employees cannot be commandeered. Neither can capital be made to flow into the utility field. But can Commissions disallow any part of wages paid as a charge to operation on the ground they are excessive?

"I See by the Papers—"

* * * * Professor *Albert Levitt* of Connecticut has transferred his attentions from grade crossings to electric rates. . . . He says that if anyone in the Nutmeg State burns one light in one room, the annual bill would be $2.80, if the room were 10 feet square; $6 if the dimensions were 50 by 100; and $50 if the room were 100 by 200 feet. . . . We do not know whether the Professor majored in mathematics or not, but we will take his figures. . . . So it would seem, that it would cost the owner of a room 10 feet square less than a cent a night to light it, but if the room were one hundred by two hundred feet in dimensions, it would cost almost 14 cents a night. . . . If anyone is nutty enough to build a room 100 by 200 feet, and light it with a single bulb, he ought to pay 14 cents a night for that little idiosyncrasy! . . . That's *our* opinion, anyhow.

* * * * *Governor Fred Green* of Michigan seems really mad about the action of the Federal Radio Commission in seeking to pass on the propriety of the proposal by the state to inaugurate a new 5,000-watt station for the broadcasting of police information. . . . The Federal Commission could serve the American people better, said the Governor, if it spent its time cutting down the flood of jazz and advertising that fills the air "instead of stepping entirely outside of its field and trying to tell the states what they may or may not do under the police power that belongs exclusively to them." . . . Well, let's see; Massachusetts is in the insurance business; New York threatens to go into the electric business; prior to prohibition, South Carolina was in the liquor business. . . . Why shouldn't Michigan try its hand at broadcasting? And think of the fun we'd have if Florida and California were both assigned the same wavelength!

* * * * Just because a proposed rate schedule of the Brooklyn Union Gas Company was similar in structure to schedules outlined at a convention of the American Gas Association a few years ago, *Maurice Hotchner*, a special counsel for the city, charged at a Public Service Commission hearing that the gas companies of the country have "conspired to force certain rates from their customers." . . . Dear me, the utility companies are certainly in a peck of trouble! . . . On the one hand they are pounded by ratepayer experts for lack of uniformity in rate schedules, and on the other hand they are charged with conspiracy for bringing about uniformity. . . . Sometimes it just seems as though there is not justice.

* * * * *Henry J. Kronk*, while running for an assembly nomination in New Jersey, said that the trolley and bus fares "ought not to be allowed to go beyond 5 cents." . . . As vote-getting planks, we might suggest a plea for 5-cent beefsteak and for 5-cent gasoline. And how about a plank for the abolition of taxes for political service?

* * * * It is reported that night baseball is becoming popular in Oklahoma following successful trials on electrically lighted fields. . . . There is the truth at last; the baseball fans are being exploited by the "power trust."

* * * * The *Public Franchise League*, in a letter to every member of the Massachusetts legislature, states that "if rates for light and power are brought down to the level where they belong and the charging of prices to support outrageously inflated capitalization is to be prevented, the general court must tax to strengthen the regulation system." . . . Gosh, that's pretty tough on the Massachusetts Commissions, which boast that they have strictly regulated capitalization since 1885.

* * * * The positions of the liberals and radicals on the rate base question, have been completely reversed since the decision of the Supreme Court more than a quarter of a century ago, *Mark Sullivan* says. . . . "Today and recently the railroads are where Bryan was; today and recently the present-day Bryans are where the railroads were. . . . Neither side seems to think there is any humor or irony in their change of position. With perfect solemnity—indeed, with violent sincerity, each side goes into court and argues for the thing which in 1897 it denounced as unfair to the point of sinfulness." . . . But why bring that up?

* * * * *Mr. Raymond S. Tompkins* says that man will buy short-weight pounds of merchandise if only it is put up in a handsome package and exclaim "This is service!" . . . Yep, *Raymond*—and we might add if man could press a button and have a pound of butter appear by magic on his table or if he could get a bushel of potatoes every time he turned a tap in his fruit cellar, he would complain "This service is rotten!" . . . Man still is the champion entertainer in the House of Mirth.

* * * * *Mr. Morris Llewellyn Cooke,* noted Philadelphia public utility expert on electric rates for the home, in a recent series of newspaper articles says that Plattsburg, N. Y., Beacon, N. Y., and Hudson, N. Y. are near enough to Niagara Falls to take advantage of cheap water power electric rates. . . . According to *our* map, Niagara Falls is on the western side of New York and several of the cities mentioned are on the eastern side of the state. . . . But maybe they use different geographies in the Pennsylvania schools.

* * * * Speaking of the "power trust," Senator Norris said: "This is the same outfit which has been creeping and crawling stealthily and silently into every avenue of American life to levy tribute." . . . Why not have electric service rendered to the common people on the franking basis? . . . What the people need is free current and better service.

* * * * A bill has been introduced in the Kentucky legislature to provide for the carrying of blind persons with a guide, for a single fare on the Blue Grass state's railroads. . . . And a good idea, too. . . . If the practice could only be extended to ball games and symphony concerts, no blind man would travel alone.

* * * * "All public utility rates include taxes paid by the corporations. We hope this is thoroughly understood," says the *San Francisco Chronicle.* . . . But it is not, dear Mister Editor, especially by the ratepayers. . . . When ratepayers get mad because a utility sets up a higher value on its property for rate-making purposes than for tax purposes, our Political Fathers say, "All right, we'll fix 'em. We'll raise their tax value and boost their taxes. We'll show 'em they can't trifle with the plain people!" . . . . Then the ratepayers all clap their hands and say "Bully!" Although they have to pay the bill. . . . The ratepayers do not know they are "it" in the merry game of screwing up utility taxes.

* * * * This new butane gas process may yet make it possible for us to buy our weekly supply of gas at the neighborhood filling station. . . . But we'll never get it from a cafeteria, if the latest ruling by the Indiana State fire marshal, *Alfred M. Hogston,* is followed universally. . . . According to this ruling, no gasoline or gasoline product shall be run into a container at public service stations or other places except by the owner or by regular employees. . . . The ruling came as a blow to the hopes of Indiana gasoline dealers who had established "self service" stations to cut down operating expenses.

* * * * Isn't there a good deal of flapdoodle in the newspaper jibes at "lobbying?" . . . What about the first amendment to the Constitution, guaranteeing the right of the people to come together for the purpose of petitioning their government? . . . The Constitution does not say where they may assemble. . . . It does not forbid access to that Mecca of politics on the Potomac. . . . It aims to make the Capitol as free and safe for the lobbyist as the Botanical Gardens are for the botanist. . . . But then, what is the Constitution to our political kiddies?

* * * * "It seems peculiar to me," said the lawyer for the transportation company, "that of all those on the bus, including nineteen passengers who were standing, none complained except Mr. J.—and he had a seat." . . . "I can't agree that that is peculiar," said the Commissioner who was hearing the case. . . . Righto!

* * * * At a recent rate hearing before the New York Public Service Commission, the usual decorum was upset. *Cornelius Sheehan,* attorney for a group of Brooklyn taxpayers, was cross-examining *Edward J. Cheney,* gas company engineer. . . . "Please address the witness and not the audience," interjected *Mr. Van Namee.* This precipitated the outburst. . . . "This is no joking matter. We are serious here!" shouted *Schneider.* . . . "I'm serious, too," said *Van Namee.* . . . "Well, I don't think you are, and I now make the motion to exclude you from this case," continued *Schneider.* . . . "I don't think the public will get a fair hearing from you." . . . Just suppose that these hearings were in a court room; can *y' imagine?*

The March of Events

Interstate Agreement on Bus Regulation Reached

AN agreement under which the Public Service Commissions of five southern states will recognize certificates of convenience and necessity issued by each Commission to motor carriers has been reached, according to a report in the *United States Daily*. This paper reports concerning an announcement by the vice chairman of the Georgia Commission, Albert J. Woodruff:

"The agreement, he said, also covers the procedure to be followed in the granting of certificates for the operation of interstate bus lines.

"A conference, called by Mr. Woodruff, was held in Atlanta July 14th and the Commissions of Florida, Tennessee, North Carolina, and South Carolina, in addition to Georgia, were represented. A meeting with the Alabama Commission will be held later, Mr. Woodruff said.

"He stated the regulatory Commissions of the states represented at the conference will hereafter suspend action upon an application for a bus line through more than one state until the Commission in the state of the applicant's residence has passed upon the matter.

" 'Comity has been established between the states in question as to motor vehicle license tags,' Mr. Woodruff said, 'and the reciprocal agreement reached on the matter of motor-carrier certificates of public convenience will go far toward eliminating many difficulties that have been a cause of friction between the state agencies having jurisdiction over motor carriers in the southeast.' "

Alabama

Utility Objects to Competition by Wholesale Patron

THE Alabama Power Company has appealed to the Montgomery circuit court to review a Commission order allowing the Tuskegee Light & Power Company to serve the town of Shorter and contiguous territory. The power company contends that the Commission erred in granting the order, that the order is contrary to the evidence, and that the power company was itself proceeding with construction of a line to serve this community.

The Tuskegee Light & Power Company purchases all of its power from the Alabama Power Company, which objects to furnishing electricity to further the business of its rival. The power company, according to the Montgomery *Advertiser*, has served notice upon the Tuskegee Company that it would not provide the current for the Shorter line.

Mobile Power Contract

THE city of Mobile under two contracts recently approved by the Commission will save approximately $15,000 yearly, according to the Mobile *Press*. One contract is for furnishing power to the city's waterworks pumping stations, and the other is for white way lighting.

These contracts were first objected to by the mayor but later were signed. City officials decided to do their waterworks pumping at night, which will give them an off-peak rate.

California

Temporary Gas Rates Fixed

TEMPORARY rates have been fixed by the Commission for natural gas service of the Pacific Gas & Electric Company, which operates in San Francisco and other northern California cities. These will apply to natural gas when it is turned into the mains. Further rate investigations will be made beginning in September and a permanent rate schedule will be established by the Commission.

The Commission in fixing rates established minimum charges with block rates instead of a service charge which the company has asked for. The Commission has expressed the opinion, however, that the service charge form is more equitable. On this point the San Francisco *Call-Bulletin* says:

"Although the present rates are fixed on the so-called minimum bill, or block form basis, the Commission served notice that the new rates will be built on the service charge form.

"The block form system is strongly urged by the cities involved, who have filed sharp protest against the service charge form in communications to the Commission. Briefly the difference of the two systems is this:

"1—The minimum bill or block form basis places the extra cost of serving small and infrequent users on the consumers who use the most gas. Under this system the convenience of having gas, whether it is used or not, is practically free.

"2—The service charge form makes each consumer at least partly responsible for the cost to the company of serving him with gas. This method was held by the Commission to be more equitable, and will be put into effect when the permanent rates are ordered."

Gas Service Dependent on Return

IN the words of the Los Angeles *Times* a "contented gas concern gives better service." This was brought out in the testimony of Paul A. Sinsheimer, financial expert, who testified before the Commission in the Los Angeles Gas & Electric Corporation rate hearing.

He said that the service of any public utility is directly dependent upon its rate of return expressed in earnings. A rate of return unduly low, impairing service, was declared to be against the public interest, while a rate of return under enlightened public policy should be sufficiently generous to bring about the fullest measure of service in the public interest and to maintain the economic and social well-being of the community.

Several witnesses testified as to the return which should be allowed a public utility. Victor H. Rossette, executive vice president of the Farmers' and Merchants' National Bank, asserted that the return should be between 8 and 9 per cent. The Commission has considered a return of between 7 and 7.5 per cent reasonable.

Colorado

Gas from Kansas

AN application for authority to construct natural gas pipe lines to serve southeastern Colorado towns from wells in Stevens county, Kansas, according to the *United States Daily*, has been filed with the Public Utilities Commission by A. J. Hardendorf, of Lamar, Colorado. This paper goes on to say further:

"The applicant proposes to build one line west crossing the Colorado-Kansas state line and going up to Lamar. This would serve other Prowers county communities between the state line and Lamar. The other line would cut the state line to the south and terminate at Springfield, Baca county.

"Twenty-five miles of 8-inch pipe and 66 miles of 6-inch pipe would be laid. The capacity of the line at Lamar would be 4,900,000 cubic feet of gas and the estimated peak load at the same point would be 2,054,000 cubic feet.

"Mr. Hardendorf also filed an application for permission to construct and operate natural gas distributing systems in Lamar and Wiley, both in Prowers county, and stated that similar applications to serve other communities in Baca and Prowers counties would be filed later. The only utilities operating in that section of the state are furnishing electric light and power, the petition stated."

Connecticut

Attorney General Must Proceed against Commission

THE attorney general of Connecticut has no discretion to decide whether there are proper grounds for procedure to oust the members of the Public Service Commission, according to a recent decision by the supreme court of errors. This ruling resulted from a petition filed by 100 voters under a statute providing for an action by the attorney general for that purpose.

The attorney general took the position that he was not required to proceed against the Commissioners unless the grounds stated

seemed to him justifiable. The court, however, disagreed with this contention, holding that the statute makes it mandatory for the attorney general to act regardless of his opinion as to the justification.

The petition filed alleges as a ground for removal that the Commissioners have neglected their duty to require every railroad in the state to remove at least one grade crossing each year for every 50 miles of road operated in the state. The Commissioners have stated that a reason for not compelling further crossing elimination is that the financial condition of the railroads did not justify it and that this was a good ground, under the wording of the statute, for their position.

It has been intimated, according to the newspapers, that the case may be appealed to the United States Supreme Court on the ground that constitutional rights are involved.

District of Columbia

Who May Demand Unified Traction Operation

OFFICIALS of the Washington Railway & Electric Company in answer to a suit brought by a private individual to compel the Commission to order unified operation of street cars in the city of Washington has challenged the Commission's authority. The company contends that the section of the Public Utilities Act authorizing the Commission to enforce the joint use of car tracks or facilities is applicable only to enforce a request by one company for use of the tracks of the other.

Last November when the Commission rendered a decision against a 10-cent fare on the street railways, it was stated that the Commission has power to compel the companies to make joint use of each other's tracks and other facilities.

Taxicab War Begins

WASHINGTON'S long-predicted taxicab war, says the Washington *Times*, probably was started on July 15th when the Nickel Cab Company began operations on the streets of Washington. The new cabs will carry from one to five persons for 5 cents a third of a mile, or 15 cents a mile. They operate with meters and have no zones.

It was learned by newspaper men from the Public Utilities Commission that the new company had not yet appeared to file a rate schedule, nor had it asked for official sanction, although the fleet was given a police inspection.

Illinois

Telephone Franchise Recommendations by Committee

A NEW telephone franchise ordinance has been approved by a committee of the Chicago council by a vote of 10 to 6. If approved by the council, it will run for twenty-three years and thereafter until terminated by six months' notice from either side.

Under the new ordinance the city loses free telephone service in the city hall, said to be worth about $200,000 a year, and a contribution of $39,000 formerly made toward upkeep of the telephone complaint bureau in the city hall.

An annual compensation of not less than $2,000,000 is agreed upon. This is in excess of any amount paid under the old franchise and is said to represent a concession by the company, which offered originally to pay 3 per cent of operating receipts.

The city representatives yielded on the question of paying for relocation of underground facilities in connection with subway construction. At first the city sought to force the company to relocate its cables and conduits on demand and to bear the cost of this work. Attorneys for the company said they would agree to the provision provided all utilities were placed upon the same plane, but that they "would not be singled out." They were willing to pay a reasonable rental for space in the subway galleries, says the Chicago *Herald-Examiner*.

Traction Progress

THE citizens' transit committee, which was instrumental in securing the adoption of a new transportation franchise providing for consolidated operation in Chicago, immediately after approval of the franchise, has urged the council local transportation committee to

start work on the subway. The city has assumed the obligation of building the subways through the central business district and it is urged that detailed plans and specifications be made without delay.

A legal obstacle to the transfer of a city transit fund arose following the adoption of the ordinance. The ordinance provided for the transfer of $60,000,000 held by the city treasurer to a trustee bank. Thomas Marshall, attorney for the treasurer, advised him that the courts had repeatedly held that a city cannot function through a trustee or delegate its power to another, and that this section of the ordinance is invalid.

Officials of the surface and elevated lines, meeting with their engineers, says the Chicago *News & Journal*, on July 8th laid plans to start on their vast construction program at once, without waiting for the actual consolidation of the systems.

Between $8,000,000 and $10,000,000, it is said, will be spent by the companies in the next few months on improvements and additions.

As a step towards consolidation, the Chicago City Railway Company, operating south side service lines, has been thrown into a receivership. The north and west side service lines have been in receivership since 1926. A consolidation manager was to be named to handle all the details of the reorganization and merging of the lines.

Ten-Cent Fare on Elevated

A REPORT was filed with the Federal court on July 2nd recommending that the 10-cent fare of the Chicago elevated lines be made permanent. The report was filed by Master in Chancery Roswell B. Mason, and will come up for approval or disapproval by Federal Judges Page, Wham, and Carpenter. The special master found that a straight 10-cent fare on the elevated lines furnishes a fair return on the company's investment. He urged that this be retained and that the city's efforts to restore the old rate of three rides for 25 cents be rejected.

The elevated lines have sought permission from the Commission to charge this fare, and two years ago appealed to the Federal court for an injunction restraining the Commission from interfering with it. A temporary injunction was granted and hearings were held by Mr. Mason.

Indiana

City Asking Higher Rates Attacks Utility Rates

THE city of Bloomington has petitioned for authority in behalf of its municipal water works to increase rates. Contemporaneously it is pressing a petition before the Commission to secure a reduction in the electric rates of the Interstate Public Service Company.

The petition for lower rates was filed in June, but it has been explained that an appraisal of the property has been held up because of an awaited decision by the Federal court in the Martinsville rate case. Seventy-two petitions filed with the Commission asking for the adjustment of local electric light rates are delayed for this reason, according to the Indianapolis *Star*. It is said that the city of Martinsville has the services of the staff of the Commission and will be using these experts for several weeks.

In the Martinsville case the light company asked permission to establish an optional rate and the Commission finally lowered the rate, thereby effecting a saving of $25,000 a year. The company appealed to the Federal court and the hearing is set for September 2nd. The decision in the Martinsville case is expected to stand as a precedent for the whole state.

Kansas

Hearing on Fares

THE Kansas Commission on July 1st heard an application of the Kansas City Public Service Company for a 10-cent street car fare in Kansas City, Kansas. A. H. Skinner, assistant city counselor for Kansas City, opposed the application, asserting that in the first five months of 1930 the revenues of the company were $2,000 greater than they were in the same period of 1929. He also denied the claim of the company that its revenues would be $200,000 less this year than last year, and insisted that the company is making a profit at the present 8-cent fare for its operations on the Kansas side.

Maine

Hotel Purchase by Electric Utility Criticised

FRANK W. Winter, treasurer of the Maine Consumers' League, says the Lewiston *Journal*, has presented a petition to the Public Utilities Commission charging that the Androscoggin Electric Company had gone beyond its chartered rights in buying a hotel, that rates had in truth increased 30 per cent, and that the company had a monopoly. Mr. Winter, says this paper, presented the following statement:

"The Androscoggin Electric Company is required under the laws of Maine to provide electric service and meet the public need for electricity. They are not chartered for any other purpose. Contrary to law, they have purchased a hotel property and have, entered on page 21, line 63, of their 1929 report to this Commission the sum of $211,007.53 as a tangible fixed capital investment; using the words 'Hotel Littleton' as the only explanation. This, of course, the Commission will not allow. The Androscoggin Electric Company cannot, under its charter, speculate in hotel property, or, engage in hotel investments and management. Nor can this Commission allow the Androscoggin Electric Company to waste $211,007.53 in buying a property that can not be sold in the market for more than $25,000.

"This attempted transaction being illegal and contrary to the public welfare, must be ruled out by this Commission and the money returned to the treasury of the Androscoggin Electric Company."

Maryland

Authority to Require Insurance of Cab Drivers

WILLIAM Cabell Bruce, general counsel for the Public Service Commission, has rendered an opinion that the Commission has authority to require taxicab operators to provide liability insurance. The Commission, it is reported, is proceeding in accordance with this opinion. The opinion of the general counsel is quoted in part in the *United States Daily* as follows:

"Surely, it cannot be alleged that it would be an unreasonable thing for the Commission to exact, as a matter of sound administrative practice on the part of a company, which, in its short history, has been repeatedly sued in the courts for damages because of casualties in which its cabs have been involved, a safeguard in the way of insurance against accidents to which almost every prudent private owner of a motor car resorts as a matter of course, and which has long been exacted by the laws of Maryland of industrial employers for the protection of their workers.

"How insufficient the assets of not a few taxicab companies are to secure their patrons against reckless, heedless, or negligent conduct on the part of their cab operators, it is hardly necessary to say in the light of facts which have been brought to the attention of the Commission in its relation to taxicabs.

. . . .

"Where the Commission is empowered to approve or disapprove the exercise of a franchise right, it is also empowered, in my judgment, to annex any lawful or reasonable condition to its approval that it may deem proper."

Massachusetts

Owl Car Service Threatened in Springfield

INTIMATION by the Springfield Street Railway Company that it would abandon all-night service after September 1st has started city officials upon a search for franchise provisions or other legal weapons to compel a continuance of this service. The Springfield *Evening Union* says that although City Solicitor Leary had not had opportunity to delve into the charter or the franchises of the trolley company he was not aware of any club that the municipality might wield to compel continuance of the service.

The city clerk, according to this paper, went over a number of franchises issued to the company since 1873, but in none of them was there any clause that required the company

to assure continuous service on any of the lines for which approval was sought at the time. The matter may be taken up with the Public Utilities Commission.

Discontinuance of this service is said to be due to losses suffered by the company. Operating expenses on the all-night lines far exceed the revenue and the company is seeking to cut down costs.

Should this service be abandoned there is a possibility, says the Springfield *Union*, that the transportation board may give consideration to a substantial reduction in taxicab rates after midnight, or perhaps a reduction of both day and night rates. The trolley company was one of the principal opponents of lower taxicab rates during a recent rate war waged by cab operators.

Minnesota

Gas Rate Appeal to Higher Federal Court

THE Minneapolis Gas Light Company on July 14th opened its fight before two United States Circuit Court judges to place its own gas rates in effect. Opposition by the city of Minneapolis was on hand.

This proceeding is to review a temporary injunction granted by the district court to prevent the company from charging its own schedule of rates. These rates differed from a schedule prescribed by an ordinance of the city. An injunction was denied by the lower court against the enforcement of the rate ordinance.

A valuation is under way in order to establish a permanent rate. This is in the hands of Judge Herbert A. Dancer of Duluth, who has been appointed special master in chancery. Hearings are scheduled to begin September 3rd.

The gas company urges that the ordinance rates are confiscatory and bases its claim on a valuation of $22,000,000. The city contends that the property is worth only $11,800,000, according to the Minneapolis *Journal*.

Missouri

City Fails to Block Fare Hearings

THE Public Service Commission on July 10th completed evidence in the investigation of a proposed fare increase by the Kansas City Public Service Company. Voluminous records were submitted and the city was allowed two weeks in which to study the evidence and testimony.

Futile efforts had been made by the city to obtain court orders restraining the Commission from proceeding with the investigation, but the supreme court upheld the right of the Commission to go ahead. The city obtained a circuit court order temporarily restraining the company from appearing before the Commission. In supreme court the city filed an application for a writ of prohibition against the Commission to prohibit it from hearing the pending application for increased fares. The supreme court denied the writ of prohibition and prohibited the circuit court from further interference. The court moves by the city were based upon asserted contract obligations of the company which, it is claimed, bar Commission action.

City officials prior to these proceedings turned down an invitation of the chairman of the Public Service Commission to attend a round-table conference with the Commission and company officials to iron out difficulties. The city representatives insisted that the Commission come to Kansas City instead of the capital for the conference, but the Commission pointed out that all the Commissioners desired to be present and that it would be necessary that members of the engineering and accounting staffs attend the conference. Likewise voluminous records should be available. The city officials, according to the Kansas City *Times*, however, desired to avoid being placed in the position of approving an increase in fares and they wanted a public conference in their home city. The *Times* says:

"It was pointed out an approval of a street car fare increase without a fight would be bad politics, especially so immediately after the city election and before the county election in the fall."

Ohio

Commission to Study Cincinnati Gas Rates

ATTORNEYS for the Union Gas & Electric Company, doing business in Cincinnati, on June 25th withdrew their suit to enjoin as confiscatory the rates fixed by a city ordinance for gas. Then the company on July 3rd appealed to the Public Utilities Commission to determine the issue. Pending disposal of this application the old rate schedule will continue, with a bond of $250,000 posted as a guarantee to rebate any excess charges.

To checkmate this move, says the Cincinnati *Enquirer*, the city was to seek a writ of prohibition to prevent the Commission from taking jurisdiction.

Wisconsin

City Attacks Fares

THE Railroad Commission's order raising car fares in Milwaukee to 10 cents is declared to be both unlawful and unreasonable because it includes vast suburban areas in the single fare zone, in a brief filed by City Attorney John M. Niven with the supreme court in the city's appeal from the Commission's ruling. The Milwaukee *News* says concerning the brief:

"Mr. Niven contends the same rule should be applied in fixing street car fares as the high court used in the Eau Claire electric light and power case in 1922. There, the court concluded that suburban districts could not be brought into the fixing of light rates in Eau Claire.

"Four principal points are made by Mr. Niven in his plea that the order be set aside.

"First—that prior to the enactment of the Railroad Commission law cities were empowered to regulate their own utilities and that it was recognized that in so doing the cities should be treated as the unit.

"Second—that from 1859 Milwaukee secured certain advantages in street car transportation and that it was originally intended only to serve city residents; that it was not until 1919 that any street railway outside the city limit was acquired by the Electric Company; that any departure from the rights so acquired would redound to the disadvantage of the city.

"Third—That the suburban area has failed to pay operating costs, not to speak of company revenue, and that it is grossly unfair to saddle this unprofitable burden upon Milwaukee.

"Fourth—That the Commission's method of fixing fares has been contrary to the fundamental basis of rate making; that while it might be proper to afford equal rates in a 'community of interest,' the rule cannot apply to Milwaukee as the 'community of interest,' stops at the city limits. Suburbs have nothing in common with Milwaukee in taxation, schools, public institutions, and other activities."

The street railway company has also appealed from the Commission order and has filed a brief outlining reasons why the new metropolitan fares and zone boundaries are not satisfactory. The brief makes the statement that the company "has been cast in the rôle of Santa Claus for many years" and continues:

"Now that the so-called unit has passed adolescence the heavy red coat and artificial white beard become irksome unless St. Nicholas can be inspirited by the assurance that electric utility earnings may be used to make the necessary purchases to replenish the bag and feed the reindeer."

The Latest Utility Rulings

ALABAMA COMMISSION: *Commission v. All Electric Utilities Operating in Alabama.* Uniform rules and practices for electric utilities in the construction and operation of rural extensions were promulgated by the Alabama Commission in a general order issued July 2, 1930.

CALIFORNIA COMMISSION: *Re Pacific Gas & Electric Co.* The State Commission, in a divided opinion, 3 to 2, refused to order the Great Western Power Company, and the Pacific Gas & Electric Company, to supply electrical energy to the cities of Fairfield, Mountain View, and Stockton for purposes of resale over municipally owned distributing systems in competition with the service furnished by the utilities themselves. A majority of the members expressed the opinion that they did not believe the mere filing of a schedule by the Pacific Gas & Electric Company, particularly when coupled with the re-

fusal of the companies to serve competitors thereunder, constituted a dedication of their facilities to the service of competitors. Commissioners Seavey and Carr dissented.

ILLINOIS COMMISSION: *Re Commonwealth Edison Co.* The furnishing of incandescent bulbs was held to be an integral part of public utility service for which a charge might be included in the rate. (*Reviewed in this issue.*)

INDIANA COMMISSION: *Re Bank of Linton.* In granting authority to the bank of Linton to sell a local gas system to the Indiana Utilities Corporation, gas producing machinery and equipment rendered useless through the introduction of butane gas was not appraised by the Commission's engineers in ascertaining the value of a gas utility's property, because of its nonuseful character.

IOWA SUPREME COURT: *Van Eaton v. Sidney.* A conditional sales contract between a town and Fairbanks, Morse & Company, for the purchase of an electric light plant, was held to be void. (*Reviewed in this issue.*)

KANSAS SUPREME COURT: *Ottawa v. Public Service Commission.* Action by the city of Ottawa to have declared void an order of the Commission permitting the Municipal Power Transmission Company to sell its properties to the Kansas City Power & Light Company was dismissed. The court said it is not essential to show that the seller is giving poor service to its patrons before such an order can be made.

MASSACHUSETTS COMMISSION: *Mayor of Boston v. Boston Consolidated Gas Co.* The Commission denied a petition by the mayor of Boston for a reduction in the price of gas sold in that city where the annual return of the utility for the year 1929 showed that it had failed to earn its declared dividend of 8 per cent on par, or approximately 6½ per cent on par and premium, by $142,000. The Commission pointed out that the existing rates had been in effect only three months, which was not long enough for it to determine whether the utility's earnings would be sufficient.

MISSOURI COMMISSION: *Re Commonwealth Utilities Corp.* Application of the Commonwealth Utilities Corporation and of Francis Brothers & Company, to acquire and own fourteen thousand shares of the outstanding common stock of the St. Louis County Water Company (being more than 10 per cent of the common stock) was granted. The Commission continued to follow its rule that such transfers should be permitted where there is no evidence that the transaction will be detrimental to the consumers either by way of rates or service.

NEW HAMPSHIRE COMMISSION: *Re Massachusetts Northeastern Street Railway Co.* A street railway company was authorized to operate motor vehicles in common carriage of passengers in substitution for street railway service in the southeastern portion of the state, substantially along the lines operated by the street railway, the motor service to commence coincident with the discontinuance of the rail service. The change affects the communities of Plaistown, Seabrook, and Hampton.

NEW YORK APPELLATE DIVISION: *Chateaugay v. Public Service Commission.* A judgment of the New York court requiring an electric company to remove poles and wires from village streets because of lack of local consent was held to be *res adjudicata* on the question of whether or not public convenience and necessity required the exercise of a village franchise by such electric company. Accordingly, the New York Commission was held to be without jurisdiction to grant a certificate of convenience and necessity for the exercise of such a franchise by the utility.

NEW YORK CITY MUNICIPAL COURT: *Corporation v. Garey.* A sub-metering contract between a landlord corporation and a tenant was held void. (*Reviewed in this issue.*)

NEW YORK COURT OF APPEALS: *Transit Commission v. Long Island Railroad Co.* A gas company permitted by its franchise to run mains under the street below a grade crossing was required upon order of the Commission for the separation of grades at that point to relocate its mains at its own expense.

NEW YORK COURT OF APPEALS: *Re Dry Dock, East Broadway & Battery Railroad Co.* A judgment of the lower court sustaining the action of the Transit Commission, denying an increase of fares from 5 to 7 cents to surface cars in New York city, was affirmed. (*Reviewed in this issue.*)

NEW YORK PUBLIC SERVICE COMMISSION: *Re Iroquois Gas Corp.* The Commission granted a petition by a city for a rehearing of a natural gas company's application for increased rates previously granted, upon contention that the Commission should have gone into the reasonableness of the price paid by the utility for its supply at a state line to an affiliated company; that deductions for depreciation were not made during certain periods; and that retirements were made at excessive prices and excessive values. The rehearing, however, is to be limited to evidence of these three specific contentions.

NEW YORK PUBLIC SERVICE COMMISSION: *Re Rochester, Niagara Falls & Buffalo Coach Lines, Inc.* Petition by a motor carrier for a certificate of convenience and necessity for the operation of a motor bus line between the city of Rochester and the city of Buffalo

via Brockport, Holley, Albion, Medina, Middleport, and Lockport; and the operation of a motor bus line between the city of Rochester and the city of Niagara Falls was granted. In the same proceeding, the petition of the Rochester, Lockport & Buffalo Railroad Corporation, for authority to acquire all of the capital stock of the Rochester Niagara Falls & Buffalo Coach Line, Incorporated, when issued, was granted.

OKLAHOMA COMMISSION: *Re Consolidated Gas Utilities Co.* The Consolidated Gas Utilities and the Western Counties Company were directed to accept gas produced by a number of independent operating drillers in what is known as the Sayre Gas Field in Beckham county. The utilities were ordered to take their products ratably as required by § 7924 C.O.S. 1921, in the proportion that each of the wells of the producers should bear to the total production available in said field for marketing, without discrimination either in the price paid for the gas or in the amount so taken.

PENNSYLVANIA COMMISSION: *Kunkel v. Pennsylvania Power & Light Co.* A service rule of a steam-heating utility, requiring certain service extensions between its mains and the curb line installed and maintained at the customer's expense, was held to be unreasonable, and the usual rule applicable to water utilities providing for the bearing of such expense by the utility was applied to such service.

SOUTH DAKOTA COMMISSION: *Re Tracy.* Application of Cleve Tracy, doing business as the Spearfish Bus Company, for a certificate of convenience and necessity to operate as a Class A motor carrier of persons and express between Newell and Sturgis, via Belle Fourche, was granted.

UNITED STATES DISTRICT COURT FOR OHIO: *Columbus Gas & Fuel Co. v. Columbus.* The Columbus Gas & Fuel Company and the Federal Gas & Fuel Company were held to have acquired no rights under a city ordinance increasing rates where the same was not submitted for referendum vote as required by a section of the city charter. This charter provision was attacked as invalid because the state Constitution specifically provides for a referendum on contracts between a public utility and a city only if requested by 10 per cent of the electors within thirty days. In disposing of this contention, the court said that the constitutional provision was only a limitation put upon the powers of a municipality for the protection of its inhabitants, and that there was nothing to prevent the municipality from adopting a charter imposing further limitations for the protection of its inhabitants.

UNITED STATES DISTRICT COURT FOR OKLAHOMA: *New State Ice Co. v. Liebmann.* In refusing an injunction sought by an ice company to restrain the operations of a competitive manufacturer who failed to obtain a license from a Corporation Commission, District Judge Pollock ruled that the manufacture and sale of a commodity such as ice is a useful and honorable private business which any citizen so disposed has the constitutional right to engage in without restraint from state legislature attempting to regulate such an enterprise as a public utility. (*Reviewed in this issue.*)

WASHINGTON COMMISSION: *Re West Coast Telephone Co.* The use of the telechronometer, a device for measuring the use of the telephone in units of time, must be discontinued by the West Coast Telephone Company by October 1st, in the city of Everett, according to an order just issued by the Department of Public Works. The Department found the telechronometer system to be an improper, inefficient, and unsuitable method for measuring telephone rates, and directed a return to the flat rate service.

WASHINGTON COMMISSION: *Re Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* A railroad company was given a certificate of convenience and necessity to furnish passenger and express service by motor vehicles between Everett and Cedar Falls, Washington, and intermediate points in lieu of rail service.

WISCONSIN COMMISSION: *Re Beloit Traction Co.* The Commission granted an increased fare of 10 cents without any specific finding as to the value of the company, where its records showed that even had the 10-cent fare been in effect during 1929, its revenues would not have yielded a sufficient return on any reasonable valuation. The Commission declined to make a differential in the fare between regular and occasional riders in view of the inadequate earnings of the company, although admitting the propriety of such a preference under more favorable financial circumstances.

WISCONSIN COMMISSION: *Plymouth v. Wisconsin Gas & Elec. Co.* This was a complaint by the city of Plymouth against the alleged unlawful operations by the Wisconsin Gas & Electric Company, which was rendering electric service to various portions of the town of Plymouth. (*Reviewed in this issue.*)

WISCONSIN COMMISSION: *Re Rural Telephone Co.* The application of a telephone company for increased rates at two exchanges, located at Crystal Lake and Waupaca, was granted. The Commission disapproved of a rule by which a subscriber having been given notice, either verbally or in writing, that his toll bill was past due should be deemed in arrears, and receives no further service until the amounts in default shall have been adjusted.

WHAT READERS ASK

Out of the mail bag of the editors have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

Question

What do the newspapers mean by the term "trust?"

Answer

Generally speaking the word "trust" is a term used by lawyers to describe any situation where powers or property are reposed in one party for the benefit of another. Parties having such prerogatives are called "trustees." A trust in this sense is quite usual and lawful. Many charitable, educational, and social organizations are conducted by means of the trust.

The word "trust" was first commonly used in connection with commercial combinations around the early nineties when the agitation for legislation to break up trade monopolies resulting in the enactment of the Sherman Anti-Trust Law was at its height. The word was then used to describe the method employed by similar concerns to stifle competition between them. Shareholders of these companies would transfer the voting power of their holdings "in trust" to a certain group of "trustees." This group or board thus controlling both companies was able to eliminate commercial conflict between them. By a series of decisions, the Supreme Court declared the "trust agreement" by shareholders unlawful and punishable wherever it is used to restrain normal competition between similar commercial organizations. The voting trust thereupon fell into disuse.

Other means, such as the holding company and the interlocking directorate, were used by such companies to effect the same end, each in turn being condemned by the highest court. But the term "trust" continued in use until the present day. It is safe to say that today nobody knows exactly what anybody else means by a "trust." Newspapers apparently employ the term to indicate any unlawful trade combination. Some apparently employ it for any trade combination, unlawful or otherwise. There is a rather cynical saying among lawyers and others that when any industry gets big enough, it is called a "trust." This seems to be about as close a definition as any other.

Question

What do the newspapers mean by the term "power trust?"

Answer

We have seen from the preceding question that the term "trust" as used by the newspapers is rather indefinite. *A fortiori* the term "power trust" is also indefinite.

There is a growing feeling in legal circles that the Sherman Law has not accomplished as much as was expected of it. Economic laws will not be denied, man made legislation notwithstanding. Electric service particularly is of such a character that mergers and consolidations are often necessary to bring about desirable interconnection and low operating costs. A law that stops such consolidation stands in the way of efficiency and cheaper rates. That is why, more recently, a distinction has been made between consolidations "beneficial to public interest" and consolidations "detrimental to public interest."

Because of this economic tendency towards concentration of control in the electric industry, consolidations have rapidly grown up. Some of these have been effected with the approval of State Commissions. Others have been linked by the intercorporate control of holding companies not subject to Commission regulation. Whether any or all of these combinations have been in the interest of the public has become a highly controversial point. But whether they are or not, such consolidations are for the most part plainly the result of the play of economic laws.

If we look upon a trust as an *unlawful* trade combination, it is very doubtful whether there could be such a thing as a power trust. Anti-Trust Laws do not ordinarily apply to

utility service, which is of its very nature a monopoly guarded by the state. Operating utilities are regulated as to their rates and service regardless of their intercorporate affiliations.

It is doubtful also whether the term "power trust" can be accurately applied on the theory that there exists a single, centralized, collosal force linking together the larger unit combinations all over the country by means of mysterious and invisible corporate affiliations. There are, indeed, great power combinations built up by means of holding companies. But no single combination of the entire industry appears to exist.

The power trust is simply a popular term employed by the opponents of the electric industry to stigmatize this industry, as a business operating in a manner which is against the public interest. It connotes the idea of a great monopoly. It is the statement of a conclusion in the form of an epithet.

Question

Have the Public Service Commissions passed on the right of a public utility company to grant wage dividends to its employees and charge the amount to operating expenses?

Answer

This question has been considered in two cases. Milwaukee Electric Railway & Light Co. *v.* Milwaukee (Wis.) P.U.R.1918E, 1; Moritz *v.* Edison Electric Illum. Co. (N. Y.) P.U.R.1917A, 364.

In the Wisconsin Case, the Commission questioned the propriety of including a bonus paid to officers of the corporation in the basic figures in connection with an application for permission to increase rates. It was stated that as the Commission understood the bonus policy with respect to payments to officers, it was closely associated with the company's dividend situation, and that if so, these bonuses, if paid, should be contributed by stockholders, and not constitute an operating expense chargeable against ratepayers. This decision deals only with bonuses to officers and not to other employees.

In the New York Case, the company asked to be allowed to include in the cost of the service covered by rates an amount for "appropriations to employees for faithful and efficient service." These expenditures stood for payment to the company's investment fund for the benefit of its employees under a profit-sharing plan. It was said that the amount disbursed was dependent upon the rate of dividends paid by the company. The Commission took the position that if the allowance were made for this item in operating expenses, it should be done only with the understanding that such payments would continue at the then existing rate regardless of the effect of a revision of the rates on dividends.

The question of how far Commissions can refuse to allow payments under a profit-sharing plan to employees of public utility companies as an operating charge against ratepayers is unsettled, just as is the question of how far they can interfere with regular payments of wages as a charge against ratepayers. An additional compensation to employees, whatever its form, for faithful and efficient service is a payment made for the benefit of the customers of the company as much as for that of the company.

Question

What Commissions have adopted the uniform classification of accounts recommended for adoption by State Commissions at the annual meeting of the National Association of Railroad & Utilities Commissioners in Atlanta, October 1921?

Answer

The Commissions of the states of Alabama, Illinois, Nevada, Oregon, Tennessee, Utah, and West Virginia have adopted the uniform classification of accounts for water utilities recommended at the convention of the National Association mentioned in 1921. Illinois has made minor changes in the classification, and Oregon adopted the classification with a few exceptions. A number of other states have uniform classifications of their own for water utilities.

Question

As a subscriber to PUBLIC UTILITIES REPORTS *we have frequently seen mention made of various light and power companies applying to the various State Commissions for approval of a promotional type of light rate. We are particularly interested in a promotional type rate where the charge is graduated upon a room basis. We would appreciate any in-*

formation you might give us in respect to this matter.

ANSWER

In regard to promotional rates, we may say that in a broad sense the term "promotional rate" might apply to any rate calculated to stimulate consumption. It might be special in its application, such as an attractive rate to encourage electric refrigerators or heavy duty appliances, or it might be more general, such as a rate calculated to increase per customer consumption by domestic consumers at a loss, but behind every real promotional rate is the idea of increasing the revenue per customer without increasing fixed costs per customer. This naturally means that the demand element is an important factor, and the increased consumption should be stimulated over long hours, and if possible by off-peak use. Cases on the special and general applications of the promotional rates are given below.

The room count is merely a means of checking the demand element in the construction of the promotional rate. It is but one feature. The service rate, the block rate, and the demand rate are variations of this effort to stimulate consumption, and at the same time places distributing costs where they equitably belong. Cases on all of these methods are cited below. The room count as a basis for promotional rate to encourage consumption by domestic consumers has the endorsement of the Massachusetts, the Illinois, the Wisconsin, and other Commissions.

On these points we refer you to *Re* Alabama Power Co. (Ala.) P.U.R.1928E, 383; Aledo *v.* Illinois Northern Utilities Co. (Ill.) P.U.R.1928C, 67; *Re* Boston Consolidated Gas Co. (Mass.) P.U.R.1928C, 309; *Re* Consumers Power Co. (Mich.) P.U.R.1928D, 698; *Re* Darlington Electric Co. (Wis.) P.U.R.1925A, 305; *Re* Denman (Idaho) P.U.R.1928C, 672; Department of Public Works *v.* Washington Water Power Co. (Wash.) P.U.R.1928A, 122; Devils Lake Steam Laundry *v.* Otter Tail Power Co. (N. D.) P.U.R.1928C, 83; *Re* Edison Electric Illuminating Co. (Mass.) P.U.R.1928D, 859; *Re* Garfield Electric Co. (Wis.) P.U.R. 1927B, 199; *Re* Helena Light & Railway Co. (Mont.) P.U.R.1927E, 35; Louisiana *v.* Louisiana Water Co. (Mo.) P.U.R.1918B, 774; *Re* Madison Gas & Electric Co. (Wis.) P.U.R.1928E, 601; *Re* Malden Electric Co. (Mass.) P.U.R.1928D, 856; *Re* Milwaukee Electric Railway & Light Co. (Wis.) P.U.R. 1916E, 113; *Re* Mystic Valley Water Co. (Conn.) P.U.R.1925D, 385; *Re* Northern States Power Co. (Wis.) P.U.R.1925B, 197; Wauzeka Creamery Co. *v.* Wauzeka Light & Power Co. (Wis.) P.U.R.1928E, 158; *Re* Wisconsin Gas & Electric Co. (Wis.) P.U.R. 1924B, 479; York *v.* York Water Co. (Pa.) P.U.R.1917F, 130.

QUESTION

A utility company regulated by a State Commission seeks a franchise. The company agrees not to raise rates for ten years. Is such an agreement binding? What is a leading case on the subject?

ANSWER

The general rule is that a rate contract is binding between the parties to it. Southern Utilities Co. *v.* Palatka, P.U.R.1925D, 105. The contract, however, is subject to the state police power which includes the power to regulate rates. Hoyne *v.* Chicago & Oak Park Elevated R. Co. (Ill.) P.U.R.1921A, 328; Union Dry Goods Co. *v.* Georgia Pub. Service Corp. 248 U. S. 372, P.U.R.1919C, 60. In the Illinois case, it was held to be the settled doctrine of that state that neither the state nor the Constitution had given the municipalities in the state the right and power to establish by contract rates to be charged by railroad companies, and that the right and power to regulate and fix rates for a public utility is part of the police power of the state except when clearly surrendered and delegated to a municipality In the Supreme Court case, it was held that private contract rights must yield to the public welfare where the latter is appropriately declared and defined and the two conflict.

In the 1870s, a number of the states became interested in the question of transportation rates due to the activity of the Granger organization, which at that time had a very large membership and took firm stand for state and national control of transportation companies. One of their principles was: "That all corporations are subject to legislative control; that those created by Congress should be restricted and controlled by Congress and that those under the state laws should be subject to the control respectively of the states creating; that such legislative control should be an express abrogation of the theory of the inalienable nature of chartered rights and that it should be at all times so used as to prevent moneyed corporations from becoming engines of oppression." Most of the early cases dealing with the power of the state to set aside rate contracts arose out of the effort of ratepayers to reduce rates. After the war, when prices arose, the same doctrine was invoked on behalf of the corporations seeking to increase rates.

The power of the state to regulate rates of utilities companies cannot be interfered with by contract between the company and individual ratepayers or between the company and municipalities unless the state has expressly authorized the making of contracts of this kind; but in some states this would be impossible for the reason that their Con-

stitutions forbid the legislature from bartering away its rate-making power.

QUESTION

A Canadian utility company has a case involving the question of the right of a Public Utilities Board to include in the rate base the difference between the par value of the company's securities and the price realized for them. In this instance a large part of the capital of the company was provided by the sale of first mortgage bonds at 80 per cent of their par value. The Board included this difference, amounting to $600,000, in the rate base. The municipality questions the propriety of this action of the Board. What is the American rule?

ANSWER

From the beginning there has been a difference of opinion as to the proper treatment in public utility property valuations for rate making of what is called the "cost of financing" including discount on securities and brokerage fees. Three elements may enter into the cost of financing:

1. Certain preliminary expenses, such as the cost of listing subscriptions for stock, counsel fees, cost of preparing and issuing certificates of stock, printing, etc.;
2. Stock and bond discount;
3. Brokerage fees.

Bond or stock discount is a deduction from the face value of the securities made at the time they are marketed. It is represented by the difference between the amount received by the company and the par value of the securities sold. You have asked what the American rule is with reference to bond discount. In other words, do American Commissions include bond discount in the rate base?

The question whether bond discount should be included as an item of value has been discussed by the Commissions in the United States for several years and it seems to be the prevailing opinion that this is not a proper item of value. Some Commissions, notably the Pennsylvania Commission, have recognized financing cost. Even the Pennsylvania Commission, however, has excluded bond discount from value. For example, in Herring *v.* Clark's Ferry Bridge Co. (Pa.) P.U.R. 1926D, 514, it was held that the difference between the price that bankers sold construction bonds to the public and the par value was pure bond discount which was not to be included in the rate base, but it was allowed to be amortized out of earnings over the life of the bonds as being less burdensome on the ratepayers and fair to the utility. Other cases in which this item has been disapproved are: Aluminum Goods Mfg. Co. *v.* LaClede Gas Light Co. (Mo.) P.U.R.1927B, 1; *Re* United Traction Co. (N. Y.) P.U.R.1927D, 637; *Re* Gage County Electric Co. (Neb.) P.U.R. 1926C, 170; Minersville *v.* Minersville Water Co. (Pa.) P.U.R.1926E, 147; *Re* Tennessee Eastern Electric Co. (Tenn.) P.U.R.1926E, 378; *Re* Wisconsin Railway, Light & P. Co. (Wis.) P.U.R.1926B, 6; Commonwealth ex rel. Roanoke *v.* Roanoke Water Works Co. (Va.) P.U.R.1925B, 303; *Re* St. Joseph Water Co. (Mo.) P.U.R.1924B, 338; Charleston *v.* Public Service Commission, 95 W. Va. 91, P.U.R.1924B, 601, 120 S. E. 398.

Bond discount is usually treated as a prepaid interest charge. It is a factor bearing upon the cost of money and is taken into consideration in considering the reasonableness of the return to be allowed.

QUESTION

Why should free service not be furnished to churches and charitable institutions?

ANSWER

Because such a practice would be discriminatory. The practice of furnishing free service to churches and charities would not only be discriminatory but otherwise wrong in principle. Before the time of public service regulation it was quite common not to charge churches and public charities for utility service.

Newspapers even now occasionally criticise public service corporations for not continuing this practice, not appreciating the fact that it is not the company but the ratepayers who make the contribution. If churches and public charities get their service free, the cost of that service must be paid for by someone else.

It would be not only discriminatory but unfair to require a company not receiving a reasonable return to furnish free service to anybody; and if the company were receiving a reasonable return, it would necessarily mean that if some of the consumers were getting free service, others would be paying higher rates than they should in order to make good the cost of furnishing free service.

Free service to churches and charities, therefore, means a compulsory contribution exacted from certain consumers for religious and charitable purposes. This is wrong in principle since contributors should have the privilege of choosing their own objects of benevolence.

The Utilities and the Public

New York Court Denies Fare Increase to Surface Lines

A DECISION of the New York court of appeals denying an increase in the fares of the New York city surface lines from 5 to 7 cents seems to be creating a great stir in the regulatory circles of the Empire state. Members of the New York Transit Commission profess to see this decision as foreshadowing a similar adverse ruling on the applications of the subway companies for increased rates, which have not yet been passed upon by the appellate division of the supreme court.

Railway officials and counsels, however, deny that the ruling on the surface line applications will have any bearing on the outcome of the subway or so-called "Interborough Case."

The cases arose when new tariffs of the Dry Dock East Company and other operators of surface lines in New York city were rejected by the Transit Commission more than a year ago. These tariffs were filed under § 29 of New York's Public Service Commission Law, which permits a common carrier to place into effect increased rates upon thirty days' notice to the Commission, unless the Commission finds such rates unreasonable. The Commission, in repudiating the schedules, held that the railways' rates were all fixed by statute and that they were, therefore, precluded from proceeding under § 29.

The procedure adopted by the surface carrier was calculated to obtain, if possible, a finding by the Transit Commission on the reasonableness or unreasonableness of the proposed schedules. Then, a denial of the fare increase on its merits would permit an appeal from the Commission's order as arbitrary. The Commission, however, refused to recognize the validity of the new rate sought to be imposed by the filing of the increased tariffs.

In sustaining the Commission, Judge Irving Lehman, who wrote the opinion of the court of appeals, discussed § 29 at great length, concluding that the remedies available to carriers in that section were not open to those whose rates were fixed by statute. Judge Lehman pointed out that the surface carriers had an adequate remedy under § 49 of the same law, which permits the Commission to increase rates after first making a finding as to the unreasonableness of existing rates.

In the Interborough Case an application for increased fare was brought under § 49 by the subway utility and denied by the Transit Commission. This action was sustained by Supreme Court Justice Ingraham, from whose decree an appeal is now pending before the appellate division of the supreme court.

Contract for the Purchase of Electric Plant by Municipality Held Void

WHILE the New York traction cases have attracted general interest, a decision of the Iowa supreme court seems significant in its effect upon the economic conflict between municipal and privately owned electric plants.

It is a well-known fact that it is difficult to get voters to vote for anything that means spending money. Often have proposed public projects been defeated at the polls because their adoption meant the increase of the bonded indebtedness of the taxpayers.

Not long ago a company engaged in

the manufacture of small electric plants, fit for use by towns, sought a way around the obstacle. It offered to sell its products to certain towns in such a way as to avoid the necessity of asking the voters to lay out public moneys.

Here is the plan. Instead of obligating the town by a bond issue, the company offered to sell the plant on a conditional sales contract by which the purchase price was to be paid out of moneys received from the operation of the plant —*over and above operating and maintenance expenses.* In this manner, the manufacturing company argued, there would be no new indebtedness created to prejudice the taxpayers' interest since the plant would be entirely financed out of its own earnings. Therefore, it would be unnecessary even to ask the voters' approval.

This argument received the endorsement of the Utah supreme court (Barnes *v.* Lehi City, 279 Pac. 878), when it sustained the validity of such a sales contract, although the matter was not submitted to the town voters.

A contrary ruling, however, was recently registered by the Iowa supreme court. The facts were slightly different from the Utah case. In Iowa, the authorities of the town of Sidney did actually submit the proposal to the voters. It was approved. In substance, it asked the voters if the town should establish and operate an electric plant on condition that the funds should *not be raised by bond issue or tax levies of any kind.* The only thing the town would be obligated to do would be to hand over the proceeds from the sale of current above operating and maintenance expenses. No one would risk anything but the manufacturing company.

Would the voters endorse such a scheme? The plan was adopted and the town authorities started to execute the contract when some of the taxpayers, including the Iowa-Nebraska Power & Light Company, questioned in court the validity of the arrangement.

The supreme court declared the contract void, holding that the town of Sidney, in the absence of legislative permission, had no authority, expressed or implied, to pledge the income, rent, or profits from town property for a future period. The court pointed out that beside the bare generating plant, there were other things which would be required, such as a site, a building to house the plant, a distribution system, and other things, all of which would have to be furnished by the town itself. Since the revenue received from operations would be from the operating property as a whole, the contract would in effect bind the town to pledge the income, at least in part, from its own property. This, held the court, was unlawful.

Although refusing to say that it was the only possible way, the court intimated that the proper procedure for which there was express legislative authority would have been to submit a bond issue proposition to the voters for the purpose of financing the outright purchase of the plant.

Submetering Landlord Unable to Collect Charges for Electric Service

THOSE who are concerned in the fight against gas and electric submetering will be interested in a decision of Justice William Chilvers in the municipal court for the ninth Manhattan district in New York city. Although his court is humble in rank, Judge Chilvers' opinion is at least a straw to show which way judicial sentiment is blowing on the submetering question, the storm center of which at present happens to be in New York city.

The facts were quite simple. Mr. Garey rented an apartment under a contract requiring him to pay his landlord (a corporation) for electric service,

charges for which were included as part of his rent. When tenant Garey moved out he paid up what he considered was the amount due for actual rent and became in default for the balance due for electric service. The landlord sued Garey for this amount.

Justice Chilvers dismissed the complaint, stating:

> "I hold, therefore, that a contract for the supplying of electric current, by a corporation not subject to the regulation of the provisions of the Public Service Commission Law, is *ultra vires*, against public policy, and void."

This decision goes a long way, when the landlord is a corporation, in that it embraces electric service "included as part of the rent"—a class of service in many quarters regarded as exempt from any legal prohibition against submetering.

Wisconsin Commission Authorizes Competitive Territory on Its Own Motion

WHAT is the territorial unit to be considered in determining the rights of electric utilities? The Wisconsin Commission believes that the municipality is the unit that should be considered in this matter. Rather than split up a single municipality into sectional monopolies, it has thrown open a whole township to competitive service. The Commission states:

> Our conception of the utilities law is and has always been that the municipality, the town, village, or city, is the unit for which a franchise may be granted, and that a franchise to serve within any portion of the town includes service within the entire town."

The interesting point arose when the city of Plymouth, operating as an electric utility, filed a formal complaint with the Commission alleging that the Wisconsin Gas & Electric Company was operating unlawfully in certain sections of the town of Plymouth. The city did not question the company's operations in two sections of the town, but alleged that it had itself prior rights, by way of an indeterminate permit, to furnish exclusive service in the balance of the town.

The city presented a fairly convincing record of its operations since 1901. However, it seems that the state supreme court had already decided (198 Wis. 13), that the private company had a lawful and indeterminate permit to render service in the town of Plymouth. Therefore, notwithstanding the presentation of a more complete record, the Commission, in dismissing the city's complaint, held that its claims to an exclusive indeterminate permit were necessarily *res adjudicata*.

Another interesting point in this case, however, is the fact that after dismissing the city's complaint against the company's operations, the Commission issued a certificate permitting the city to continue operating within the town. This certificate was in the form of a declaration by the Commission that public convenience and necessity requires the operation of a second electric utility in the town of Plymouth. The city did not ask for such a certificate. Nevertheless, the Commission issued it on its own motion.

The rule as to monopoly and competition in the utility field is that for the benefit of the public, as well as the utilities, an established utility rendering adequate service at reasonable rates will be protected from competition by a like utility. The Commissions, however, have discretionary powers in respect to this matter in most instances, and their decisions are governed by the facts presented in the individual cases.

The Furnishing of Electric Bulbs Is a Utility Service

THE Illinois Commission has handed down a decision on a regulatory subject which, it is believed, has never before been touched upon by any court or Commission in the United States. This subject is the question of whether a rate for electric service which includes the furnishing by the utility of incandescent bulbs does or does not combine a charge for utility service with a charge for the furnishing of merchandise in addition.

Evidence introduced in the case showed that there are about thirty electric companies in the United States that appear to have a lamp service for commercial customers. One of these, the Commonwealth Edison, was the defendant in the case.

The facts were not complicated. The complainant, the operator of approximately 200 retail grocery stores in Chicago, said that the Commonwealth Edison Company had established a rate for light and power service to its stores which included the furnishing of bulbs, and permitted the customer no option as to whether or not the lamps should be so furnished. The complainant argued that if its rates were reduced by ½ cent per kilowatt hour, it could furnish the necessary lamps for its own service, thereby effecting a substantial saving.

The Commission ruled that the furnishing of lamps by the utility without option as a part of the rate was not the intrusion of a merchandising service. It was observed that the rate included only the use of the lamps just as telephone service includes only the use of the telephone instrument, the bulbs remaining at all times property of the utility and never becoming the property of the consumer, as would happen if the lamps were in fact sold as merchandise.

The Commission also observed that the Commonwealth Edison Company was probably the largest single purchaser of incandescent lamps in the world, obtaining a discount of approximately 40 per cent from the standard list prices of such lamps. In dismissing the complaint, the Commission ruled:

> "That the evidence in this case does not establish the proposition that one-half cent or any other definitely established figure is added to the energy portion of said rate A–2 to cover so-called lamp service, but that the cost of lamp service is merely one of the factors upon which this rate is based, being undetermined so far as this record is concerned, and entering into the said rate only in the same manner as all other recognized and proper elements of cost enter into a rate."

The Ice Business Is Not Subject to Monopolistic Regulation

JUST when at least three of the southwestern states were comfortably settled in the belief that the ice business is a public utility and can be regulated as such, along comes a decision from a United States district court in Oklahoma and upsets the whole question.

This is what happened. Oklahoma passed a law in 1925, declaring the manufacture and sale of ice to be a public utility subject to the jurisdiction of the Corporation Commission as to rates, service, and other regulatory phases. The statute also forbids any person to engage in such ice business without first securing a license from the Commission.

Recently, Ernest A. Liebmann built himself a plant for making ice and selling it in Oklahoma City. Before he could start business, however, the New State Ice Company, having a virtual monopoly on the ice business in that city, sued to restrain Liebmann's operations on the ground that he had not complied with the statute by obtaining a license from the Corporation Commission.

Justice Pollock, in dismissing the complaint, held that state legislation

such as the Oklahoma statute which has the effect of restraining the free exercise of a citizen's right to engage in the manufacture and sale of a commodity such as ice could not be reconciled with the freedom of contract and labor secured by the Fourteenth Amendment of the Federal Constitution.

The court further observed that the ice business is a useful and honorable private occupation in which any citizen so disposed has a right to engage without interference from a Commission having statutory authority to grant monopolistic privileges by withholding, at its discretion, licenses for engaging in such business.

The question of the right to regulate the rates to be charged for ice, as well as the right to engage in the business itself, without Commission consent depends upon whether the ice business is a public utility business. Nobody will know for certain about that until the Supreme Court passes on the question.

What Is the Difference between an Urban and a Rural Customer

A NUMBER of Commissions have experienced difficulty in drawing the line between urban and rural customers for purposes of electric rate classification. Many utilities are at present operating under the old rule that customers residing inside of a municipal boundary are urban consumers and those who live beyond are rural customers.

But because such a rule is obviously arbitrary in that distribution costs in many thickly populated settlements beyond city limits are no greater than the costs for the same service inside of the corporate boundary, there is increasing evidence of dissatisfaction among the utilities as well as among the Commissions with such a crude classification.

Here is what the Illinois Commission said in Scott *v.* Central Illinois Public Service Company (P.U.R.1929B, 245):

> "The Commission recognizes that in many communities in Illinois, whether incorporated or unincorporated, electric public utilities may and do experience difficulty in deciding definitely those customers that should be classified rural instead of urban. It is not unreasonable to assume that there are many conditions in the state similar to this case, where under a strict interpretation of rate schedules, certain existing customers should be classified other than now classified. It appears, therefore, that each individual case as it is brought to the attention of the Commission, should be decided on its individual merits, using those facts available as a basis."

Apparently the neighboring Commission of Wisconsin is not content to let each case settle itself. In a recent rate adjustment on the application of the Nekoosa-Edwards Power Company, it has, tentatively at least, followed a rule defining a rural customer as follows:

> "A rural customer is one who can be adequately served from one transformer of not more than 10 k.v.a. capacity and who uses the service in the conduct of one enterprise, occupation or institution, located outside the corporate limits of a city, village, or community with similar characteristics or in a locality where the density of population is less than that encountered ordinarily in urban districts, at such a distance that the user cannot be adequately served from the secondary lines of the local distribution system."

The Wisconsin Commission, accordingly, permitted the utility to classify as "rural customers" a few scattered patrons living in the outlying districts of Port Edwards and Nekoosa, although they resided within the respective corporate limits of those municipalities.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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TITLES

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AUGUST

Reminders of Coming Events — **ALMANACK** — *Notable Events and Anniversaries*

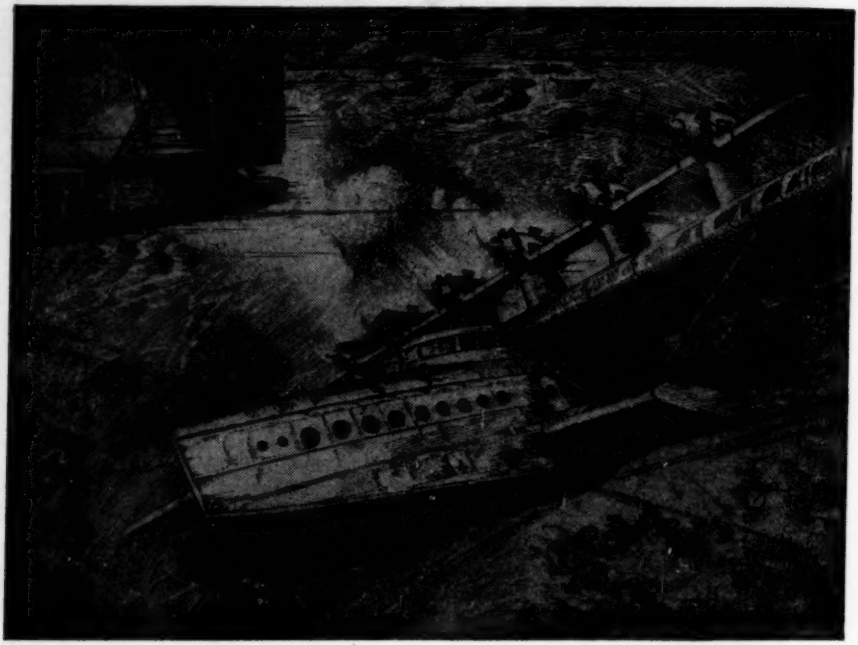
21	Th	The American public took its first trolley ride on an exhibition third-rail line, ½ mile long, built by FIELD and EDISON in Chicago, 1883.
22	F	Delegates to the Federal Convention in Philadelphia witnessed an exhibition voyage of a steamboat invented by LIEUTENANT JOHN FITCH of Washington's army; 1787.
23	Sa	The Lackawanna Railroad burst into the newspaper headlines with its first tests of radio reception on moving trains, 1914.
24	S	¶*The annual convention of the National Association of Railroad and Public Utility Commissioners will be held in Charleston, S. C., from November 12 to 16, 1930.*
25	M	Crowds greeted the arrival in Washington, D. C., of the first railroad train, which arrived in four sections on the newly completed tracks of the Baltimore & Ohio, 1835.
26	Tu	The Third Avenue Elevated Railroad, which was viewed with alarm by a skeptical public in New York, began its career as a transportation utility, 1877.
27	W	A successful test of the new marvel, "wireless telephony," was made when speech was transmitted from Arlington, Va., to Panama; 1915.
28	Th	Peale's Museum in Baltimore attracted crowds to an exhibition of illuminating gas, thus marking the beginning of the gas utilities in this country, 1816.
29	F	The first water wheel, a 30,000 horse-power turbine, was placed in operation at the Muscle Shoals plant in Alabama, 1925.
30	Sa	A gray mare, hauling a passenger coach, out-distanced the "Tom Thumb" locomotive in their historic race at Ellicott City, Md., 1830.
31	S	The coming of the motor vehicle as a utility was forecast when a Packard car completed a transcontinental journey under its own power in 52 days; 1903.

SEPTEMBER

1	M	A young Italian scientist, GUGLIELMO MARCONI, revealed new possibilities in communication by sending a radio message 100 yards, 1896.
2	Tu	Uncle Sam brought suit against the Reading Company at Philadelphia to break the alleged monopoly of the coal supply for the company's railroads; 1916.
3	W	The U. S. Department of Commerce issued its first license to a radio broadcasting station; 1921. The controversy started about the public utility status of broadcasting; 1921.

"'Tis easier to build two chimneys than to keep one in fuel."

—BEN FRANKLIN



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"TRANSPORTS OF THE SKIES;"
AN ETCHING BY J. MacGILCHRIST